TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~353~~ 152

MARY M. KEARNEY, JAMES L. HENRY, KATE KEARNEY HENRY, HIS WIFE, PLAINTIFFS IN ERROR,

vs.

JOHN DENN, LESSEE OF THOMAS O. SANSBURY, MARY E. SANSBURY, D. R. WALL, AND SARAH J. WALL, HIS WIFE, PHILIP HILL, JR, AND ANN V. HILL, HIS WIFE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED DECEMBER 7, 1870.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in & for the Maryland district, begun and held at the United States court-house, in the city of Baltimore, on the first Monday in April, (being the fourth day of the same month,) in the year of our Lord one thousand eight hundred and seventy—

Present, the Honorable William F. Giles, judge Maryland district; Archibald Stirling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—

Among other were the following proceedings, to wit:

JOHN DENN, LESSEE OF THOMAS O. SANSBURY & Mary E. Sansbury, Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill, jun'r, and Ann V. Hill, his wife,
vs.
MARY M. KARNEY, JAMES L. HENRY, AND Kate Karney Henry, his wife.

Be it remembered that, heretofore, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and sixty-six, John Denn, lessee of George T. Crawford, John H. Sansbury and Mary
2 E. Sansbury, his wife, Daniel R. Wall and Sarah J. Wall, his wife, Philip Hill and Ann V. Hill, his wife, lessee, by *by* Robert J. Brent, Joseph L. Brent, and Samuel H. Berry, esquires, their attorneys, filed in the circuit court here a mandate from the Supreme Court of the United States in the words and of the tenor following, to wit:

Mandate.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Maryland, greeting:

Whereas lately, in the circuit court of the United States for the district of Maryland, before you or some of you, in a cause between John Denn, lessor of George T. Crawford, John H. Sansbury, lately deceased, and Mary E. Sansbury, his wife, Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill, jun'r, and Anna V. Hill, his wife, lessors, plaintiffs, and Richard S. Blackburn, defendant, the judgment of the said circuit court was in the following words, viz:

"It is considered by the court here that the said Geo. T. Craw-
3 ford, lessee as aforesaid, recover against the said Richard S. Blackburn his term aforesaid yet to come and unexpired of, in, and unto all the premises mentioned in the declaration so as aforesaid by the jury found, and the said sum of one cent by the jurors aforesaid, in form aforesaid, assessed for his damages which he hath sustained by occasion of the trespass and ejectment aforesaid; and that the said George T. Crawford, lessee as aforesaid, have thereof his possession against the said Richard S. Blackburn, and so forth; and it is also considered by the court here that the said Geo. T. Crawford, lessee as aforesaid, recover against the said Richard S. Blackburn the sum of $ by the court hereunto him, have on his assent adjudged for his costs and charges by him about his suit in this behalf laid out and ex-

pended; and the said Richard S. Blackburn, in mercy, &c.," as by inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-five, the said cause
4 came on to be heard before the said supreme court, on the said transcript of the record, and was argued by counsel, on consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed, with costs, and that the said defendant, Richard S. Blackburn, recover against the said plaintiff one hundred and ninety dollars and twenty-six cents for his costs herein expended, and have execution therefor. And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, with directions to award a venire facias de novo.

5 MARCH.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-five.

5 Costs of defendant: Clerk, $170 26; attorney, $20 00—$190 26.
Taxed by—

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

And afterwards, to wit, on the first Monday in November, in the year of our Lord one thousand eight hundred and sixty-six, came into the circuit court here the said George T. Crawford, John H. Sansbury and Mary E. Sansbury, his wife, Daniel R. Wall and Sarah J. Wall, his wife, Philip Hill and Ann V. Hill, his wife, by their attorneys aforesaid, and the said Richard S. Blackburn, by Reverdy Johnson and William Schley, esquires, his attorneys.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord 1867, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and
6 their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year last aforesaid, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

Thereupon further process of and upon the premises aforesaid, be-

tween the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord, 1868, come again into the circuit court here the plaintiffs aforesaid, by their attorneys aforesaid; and the said defendant doth not come, and the said plaintiffs suggest to the court here that, after the last continuance of the plea aforesaid, to wit, on the day of , and before this time, at the district aforesaid, the said Richard S. Blackburn departed this life.

Whereupon, on motion of the said plaintiffs, by their said attorneys, leave is hereby given by the court here to the said plaintiffs to make new parties to appear and defend in the plea aforesaid. Whereupon further process is, by order of the court here, further continued
7 until the first Monday in November next. The same day is given to the said plaintiffs then and there, &c.

At which said first Monday in November, in the year last aforesaid, come again into the circuit court here as well the plaintiffs aforesaid by their attorneys, as Mary M. Karney, James L. Henry and Kate Karney Henry, his wife, (who are made parties defendants in the plea aforesaid,) by Reverdy Johnson and William Schley, esquires, their attorneys.

The following order and agreement were filed in court here, to wit:

In the circuit court of the United States in and for the fourth circuit and district of Maryland.

GEORGE T. CRAWFORD AND OTHERS }
vs. }
RICHARD S. BLACKBURN. }

The defendant's death having been suggested, and the following persons being interested on the part of defendant in the property mentioned in the declaration, namely, Mary M. Kearney, J. L. Henry and Kate Karney Henry, his wife, the clerk will please enter their appearance as defendants by me, as their attorney, they being alone interested as defendants in said property.

WM. SCHLEY,
Attorney for Mrs. Kearney & Mr. & Mrs. Henry.
8 R. J. BRENT,
For Plaintiffs.

It is agreed that the original pleadings shall stand mutatis mutandis.

WM. SCHLEY,
R. J. BRENT.

Thereupon further process of and upon the premises aforesaid between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April in the year of our Lord, 1869, come again into the circuit court here, the parties aforesaid, by their attorneys aforesaid.

Whereupon further process of and upon the premises aforesaid, be-

tween the parties aforesaid, by consent of said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year last aforesaid, come again into the circuit court here, as well the said Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill and Ann V. Hill, his wife, by their attorneys aforesaid, as the said Mary M. Karney, James L. Henry and Kate Karney Henry, his wife, by their attorneys
9 aforesaid. And the said George T. Crawford and Mary E. Sansbury come not. And thereupon the said Daniel R. Wall and Sarah Jane, his wife, Philip Hill and Ann V. Hill, his wife, by their attorneys aforesaid, give the court here to understand and be informed that, after the last continuance of the plea aforesaid, and before this day, to wit, on the day of the said George T. Crawford and Mary E. Sansbury, (two of the plaintiff's lessors,) died. Whereupon Thomas O. Sansbury and Mary E. Sansbury, children and heirs-at-law of Mary E. Sansbury, deceased, are made parties plaintiffs, and appear by Robert J. Brent, Joseph L. Brent, and Samuel H. Berry, esquires, their attorneys.

Whereupon the said defendants by their attorneys aforesaid, file in court here the following motion, which is in the words following, to wit:

Motion to dismiss the suit.

In the circuit court of the United States for the fourth circuit and district of Maryland.

JOHN DENN, LESSEE, &c., &c.,
vs.
MARY M. KEARNEY, KATE KEARNEY HENRY, and J. L. Henry. } Action of ejectment.

10 The defendants in the case above entitled respectfully suggest to the court here that the lessors of the plaintiff in the above case are all citizens and residents within the State of Maryland, and that no one of them ever has been, or is now, a citizen of any other State of the United States, and that the defendant, Mary M. Kearney, is now, and at the time of the commencement of this suit was, and during the intervening period has continuously been, a resident and a citizen of the District of Columbia, and that your defendants J. L. Henry and Kate Kearney Henry, his wife, are now, and during the entire period of this suit, have been citizens of the State of Maryland, residents of Prince George's County, in said State. And they are advised and respectfully suggest that in the present predicament of the case, and the citizenship and residence of the parties, this court has no jurisdiction to hear and decide the case; and the defendants therefore respectfully pray the court here to dismiss this suit.

WM. SCHLEY,
Att'y for Defendants.

Which being read and heard, and fully understood, and mature deliberation being thereupon had, it is ordered by the court here
11 that the motion aforesaid be, and the same is, overruled.

Whereupon the defendants reserve their exception to the decision of the court.

Whereupon further process of and upon the premises aforesaid between the parties aforesaid, by consent of said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in April next, and ordered that the deposition of Robert Wright be taken by the commissioner of this court on two days' notice to the defendant's counsel.

And afterwards, to wit, on the 11th day of December, in the year last aforesaid, deposition of Robert Wright filed.

At which said first Monday of April in the year of our Lord, 1870, come again into the circuit court here as well the said Thomas O. Sansbury and Mary E. Sansbury, Daniel V. Wall and Sarah Jane Wall, his wife, Phillip Hill, jun., and Ann V. Hill, his wife, lessee, by their attorneys aforesaid, as the said Mary M. Karney, James L. Henry and Kate Karney Henry, his wife, by their attorneys aforesaid.

And afterwards, to wit, on the 12th day of May in the year last aforesaid, the following agreement was filed in court here, to wit:

12 *Agreement as to evidence.*

CRAWFORDS
vs.
BLACKBURN & OTHERS.

To release the plaintiffs from the necessity of taking out a commission to take the testimony of Mrs. Margaret Norfolk, now residing at Lowell, in Massachusetts, it is agreed that her testimony may be read as reported in pages 56 and 57 in the printed record of the case in the supreme court, to have the same effect and subject to the same exceptions as if taken in court.

It is also agreed that, without further authentication of the record used in the former trial of this case, the same may be read from said printed record.

WM. SCHLEY,
For Def'ts.
R. J. & J. L. BRENT,
For Pl'ffs.

Whereupon for trying the issue aforesaid above joined, between the parties aforesaid, it is ordered by the court here, that twenty persons from the panel of petit jurors returned to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel of the
13 respective parties, and the counsel for each of said parties having stricken out four persons from said lists, thereupon the remaining twelve persons being called come, to wit:

William Hall, Charles L. Jessop, W'm D. Blackstone, James Jones, Robert S. Mooney, John C. Mason, Richard F. Gardner, George Smith, Thomas C. Childs, David T. Burnett, John Kipp, and Francis P. Scott, who being empannelled and sworn to say the truth in the premises; upon their oaths do say, that as to the trespass and ejectment aforesaid in three undivided fourths of the premises mentioned in the declaration, that the said Mary M. Karney, James L. Henry and Kate Karney Henry, his wife, are thereof guilty, in manner and form as the said

plaintiffs have above thereof complained against them, and they assess the damages of them, the said plaintiffs, by reason of that trespass and ejectment to one cent.

Therefore it is considered by the court here that the said Thomas O. Sansbury and Mary E. Sansbury, Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill, jun'r, and Ann V. Hill, his wife, lessors as aforesaid, recover against the said Mary M. Karney, James L. Henry and Kate Karney Henry, his wife, their term aforesaid, yet to come
14 and unexpired of, in, and unto three undivided fourths of the premises mentioned in the declaration, so as aforesaid by the jury found, and the said sum of one cent, by the jurors aforesaid, assessed for their damages which they have sustained by occasion of the trespass and ejectment aforesaid, and that the said Thomas O. Sansbury, Mary E. Sansbury, Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill and Ann V. Hill, his wife, lessors as aforesaid, have thereof their possession against the said Mary M. Karney, James L. Henry and Kate Karney Henry, his wife, &c. And it is also considered by the court here that the said Thomas O. Sansbury and Mary E. Sansbury, Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill and Ann V. Hill, his wife, lessors as aforesaid, recover against the said Mary M. Karney, James L. Henry and Kate Karney Henry, his wife, the sum of by the court here unto them, on their assent adjudged for their costs and charges by them about their suit in this behalf laid out and expended, and the said Mary M. Karney, James L. Henry and Kate Karney Henry, his wife, in mercy, &c.

Memorandum.

Before the jurors aforesaid withdraw from the bar of the court
15 here, the said Mary M. Karney, James L. Henry and Kate Karney Henry, his wife, by their attorneys aforesaid, tendered to the court here the following bills of exception, which were by the court here signed and sealed according to the statute in such case made and provided, and which are in form following, to wit:

Bills of exception.

In the circuit court of the United States in and for the fourth circuit and district of Maryland. April term, 1870.

JOHN DENN, LESSEE OF THOMAS SANSBURY & others,
vs.
MARY M. KEARNEY, JAMES L. HENRY, AND Kate Kearney Henry.

At the trial of this cause it was admitted that the late Dr. David Crawford, of Prince George's County, Maryland, departed this life on the 5th December, 1859, intestate, unmarried, and without leaving, at his death, any child or descendant, or father or mother, or brother or sister, living at his death; and that he died seized, in fee simple, of the various parcels of land described in the plaintiff's declaration, and that the said lands are of the value of upwards of twenty thousand dollars.

16 It was also admitted that the said lands were inherited by said Dr. David Crawford from his father, Nathaniel Crawford, and

that the defendants, Mary M. Kearney and Kate Kearney Henry, (the latter being the wife of the other defendant, James L. Henry,) are the only next of kin of said Dr. David Crawford, unless the lessors of the plaintiff, or some of them, are the lawful children of the late Thomas B. Crawford, who, it is admitted, died on the 9th March, 1848, and was the brother of said David Crawford.

The plaintiffs, then, further to maintain the issues on their part joined, read to the jury, without objection, the deposition of Robert Wright, as follows:

Deposition of Robert Wright.

Circuit court of the United States for the district of Maryland.

CRAWFORD, LESSEE,
vs.
KEARNEY, HENRY & AL.

Deposition of Robert Wright, of Bladensburg, Maryland, taken in pursuance of the order of the circuit court, in the above cause, to be taken de bene esse, and upon due notice to the parties. Present, Robert J. Brent, for the plaintiff, and William Killgour, for def'ts.

The said ROBERT WRIGHT, being duly sworn, deposes and says:

17 I knew the late Thomas P. Crawford and his brother David, ever since 1816. I was on terms of intimacy with both of them, and they both dealt at my store. I knew Elizabeth Crawford, otherwise called Elizabeth Taylor, when she resided on the farm of Thomas B. Crawford, above the mill, and near the alms-house. This was about 1830, I think. I knew old Mrs. Crawford, the mother of Thomas and David; she died long before 1830. When I first knew Elizabeth Taylor, about 1830, she passed by the name of Betsey Taylor. Betsey Taylor had, I think, at that time, two children—two daughters—one of whom married John Sansbury, and, I think, the other married Wall. David told me that Tom. was going to bring Betsey home to Greenwood, and that he was going to build a house; that he would not stay there; which he did do. On one occasion I was detained at Greenwood, on a stormy night, after David had moved to his own house and before Betsey Taylor had moved to Greenwood. I retired to bed, leaving Tom. Crawford in the house. The next morning early, he waked me up, and told me that he had just come up; that he had passed the night
18 at Betsey Taylor's; whereupon I told him if I had known that he was not in the house I would not have staid; I would have gone home in the storm, as I had a great deal of money about me. On some of my visits there he used to tell me what he was going to do for his son George. He wanted to buy him a commission in the British army. He also proposed to pay me a $1,000 a year if I would take his three daughters to board, and let them go to school at an academy in Bladensburg, with my daughters. I suggested to him that he ought to marry Betsey Taylor, and legitimate his children; that if she was good enough to raise him a family of children, she was good enough to be his wife, to which he replied that David was very much dissatisfied with his relations with her, and had moved away. She was then living at Greenwood with her four children. He brought her there a very little time after David left. I frequently paid him money, and he always sent for her and gave it to her to keep. I never saw a father treat his

children with more affection than he did—and always treated her
19 with great courtesy. She always sat at the head of his table when I have been there. I dined with them once; she was at the head of the table. I told them that I understood they were married, and I congratulated him. He said, "Who told you that I was married?" I said, "Your great friend and manager, Col. Nat. Suit," (who is since dead.) He replied that, "Nat Suit is a damned old croocked back son-of-a-bitch, and that I never will give him another negro." She sat there and smiled, but said nothing. His children, by Betsey Taylor, all went by the name of Crawford. So far as I know or heard she was faithful to Thomas B. Crawford. I was at the funeral of Thomas Crawford, who was buried on his own ground. David was there, and took my arm, saying that "He did not wish to go in front of procession with Betsey Taylor and her children." He went to the grave with me, and then invited me to dine with him, which I declined, saying, "I wish to go and hear the will read," which I did. He left before the will was read by Gen'l Bowie. Some time after this I was at David's house. I asked him if he had made his will. He said he had not. I then remarked that there was a report about Tom's having married Betsey Taylor, and that he had better settle his estate, as these chil-
20 dren might give a great deal of trouble after his death; that, looking to your family relations, you had better settle your estate, to which he replied, that, "Since Tom had acted so, he had lost all pride of family, and did not care a damn what became of his property so he enjoyed it during his life." I told him one day that I saw George Crawford shooting partridges on George's own land, and he said, "He did not want to see him, or to have any intercourse with those children at all." David was a man very aristocratic in his notions—none more so—and always associated with the very best people in the county.

Cross-examined by Mr. Kilgour:

I have always resided in Bladensburg, State of Maryland. I was not a witness in any of the previous trials. It was about 1836 or 1837 I had the conversation with him about his being married.

ROBERT WRIGHT.

Sworn to and subscribed before me this 27th day of November, 1869.

21 J. J. JOHNSON,
United States Commissioner.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John J. Johnson, being a United States commissioner, I do hereby certify that the foregoing deposition of Robert Wright was taken down, and by me reduced to writing in the presence of Robert J. Brent, for the complainants, and William Kilgour, for defendants, the said witness being first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matter at issue in said case. I hereby certify further, that I am not of counsel for either party, nor in any way interested in the same.

J. J. JOHNSON,
U. S. Commissioner.

The plaintiffs also read in evidence to the jury the testimony of Mrs. MARGARET NORFOLK, as given by her, on a trial between George T. Craw-

ford and Richard S. Blackburn, before a jury of Charles County, in the year 1860.

22 The plaintiff, further to maintain the issues on his part, produced Mrs. Margaret Norfolk, who, being duly sworn, testified that she had been at the house of Mr. Thomas B. Crauford; was there in January, 1848; she believes it was seven or eight o'clock at night; saw her for the first time; was introduced to her as Mrs. Craufurd. She sat at the head of the table, and Mr. Craufurd at the foot. After tea she talked with Mr. Craufurd about his children; he told her that two of them were at school. He showed their embroidery, piano, &c. This witness further testified that she left next morning, and bid Mrs. Craufurd good bye. This witness further testified that she saw her at a circus in Upper Marlborough, two or three years after the death of Mr. Craufurd; she was with Gen'l Bowie, who told her it was Mrs. Craufurd.

The plaintiff having stated that Elizabeth Crawford was dead, and which was admitted to be true, then read her testimony, as given on the former trial of this suit, in this court; and, also, her testimony as given on the trial of the said case, between said George T. Crawford and said Blackburn, in Charles County court, as follows:

23 And thereupon the said plaintiff produced the said ELIZABETH TAYLOR, and offered in evidence by her that her sexual intercourse with the said Craufurd began in or about the year 1828 or 1829, and that she then lived on Miss Magruder's place with her step-father, Green, her mother, and her brother; that the said Craufurd continued to visit her, and had intercourse there with her for some time; that she removed thence with her mother and her brother to Monterey; that the house at Monterey was furnished by the said Craufurd, and she and her family were supported by him; that the said Craufurd continued to visit her at Monterey; that whilst residing here she visited Washington for the purpose of having her second child, Sarah, baptized; that her sister, Sarah Evans, was the wife of the sexton of St. Patrick's Church, a Roman Catholic Church in said city, and belonged to that faith; she herself, if anything, was a Roman Catholic, but her mother and brother were Methodists. That, after morning service, on the Sunday succeeding her arrival in Washington, her child was baptized at said church by a minister whom she did not then know; his name, as she was after-

24 wards informed, was Father Fiziac; that said father followed her from the church, and overtaking her, said to her, You must make that man marry you; your soul will be in peril if you continue to live with him in sin. She at once resolved to live with the said Craufurd no longer unless he would marry, and she sent for him to come up to Washington to see her. He came on the next day, Monday. She told him she would no longer live with him as she had done; she would not return to him unless he would agree to marry her; that said Craufurd said he would marry her, provided the marriage would be kept secret until the death of his brother, Dr. David Craufurd, and assigned as a reason, that, if his brother should hear of the marriage, he would certainly make a will, and leave his estate to some one else; that she agreed to these terms, and on the next day the marriage was celebrated between them, by the said Father Fiziac, at said church, in the presence of said Sarah Evans, and her brother, Samuel Taylor, who are both now dead; that she remained some days longer at her sister Evans's in Washington, and then returned to Monterey, where she remained, the said Craufurd visiting her as before the marriage, until about June, 1844, when

she and her children removed to Greenwood, the residence of said Craufurd; that she took charge of his household, and acted in it as mis-
25 tress; she usually sat at the head of his table; he usually called her Betsey; she does not recollect that he ever introduced her as his wife to any one; he never did, to her knowledge, disclose the fact of his marriage to any one; and she never mentioned it to any one until about three weeks after the death of Dr. David Craufurd, when she was addressed by William Hill, an attorney at law, and brother of the husband of one of her daughters, on the subject, and she disclosed to him *to* the marriage; that the female lessors of the plaintiff, and George T. Craufurd, are her children by the said Thomas B. Craufurd, and were always acknowledged by him, and were treated with affection by him, and supported and educated by him.

The plaintiff, further to maintain the issues on his part, produced ELIZABETH CRAUFURD, who, being duly sworn, testifies that she was fifty-two years of age in January last, and that her maiden name was Elizabeth Taylor; about thirty years ago she became acquainted with Thomas B. Craufurd; she also knew Dr. Craufurd, and became acquainted with him before she knew Thomas B. Craufurd; she became acquainted with Thomas B. Craufurd while she lived with her mother, on a place rented from Misses Magruder. Her intimacy com-
26 menced with Thomas B. Craufurd at that place. She and her mother afterwards removed to Monterey, a place owned by Thomas B. Craufurd, where her mother died. Her step-father, who had been living at Monterey with them, left, and she and her brother continued to live there. Her eldest child was born there about twenty-eight years ago. The house at Monterey was furnished by Mr. T. B. Craufurd, as were also all the servants. Her intercourse with Tho's B. Craufurd was not commenced and assented to by her under a promise of marriage. Soon after its commencement, Thomas B. Craufurd often said he would like to marry her, but owing to his family he could not marry her then. When the child Sarah was about eight months old she went to Washington City to have her christened, and also to visit her sister, Mrs. Evans, who was the wife of the sexton of St. Patrick's Church, in that city; the child was christened in the church on Sunday, after eleven o'clock service; as she went out the Rev. Mr. Fiziac, who had performed the ceremony, and was one of the officiating priests there, followed her, and had a long conversation with her about the mode of her life. He told her that the salvation of her soul was of more importance to her than all things else, and that she could not be saved if she con-
27 tinued living in sin with Mr. Craufurd. The conversation was a long one, and, at his instance, she made up her mind if Mr. Craufurd would not marry her to leave him. Mr. Craufurd had sent the carriage up for her to come home; she sent it back on that Sunday evening, with a request that Mr. Craufurd would come up the next day. He accordingly came up, and she had a long interview with him. She related to him what Mr. Fiziac had told her, and that the salvation of her soul was of more importance to her than all things else in this world; she must separate from him if he would not marry her. He replied that he did not know about it, but that he would not marry her unless the marriage was kept secret from his mother and his brother Dr. David Craufurd. She assented that the marriage should be kept secret, and he then consented to marry her. She agreed that the marriage should take place the next day. On the next day, Tuesday, they went to St. Patrick's Church, and were there married by the Rev. Mr. Fiziac; her sister, Mrs.

Evans, and her brother, Sam. Taylor, were present; both of them are now dead. Mr. Thomas B. Craufurd returned home that evening. She remained with her sister until the following Sunday, and then returned home to Monterey in Mr. Thomas B. Craufurd's carriage. Mr.
28 Thomas B. Craufurd, often after marriage, objected to his brother, Doctor David Craufurd, knowing anything about it; for if he did, neither he nor his children would ever get a cent of his, Dr. Craufurd's property. Her children, George and Victoria, were born after the marriage; George was born some ten or twelve months after it. From the time of the marriage she and Thomas B. Craufurd lived together as man and wife about four years and a half before the death of Thomas B. Craufurd. He took her and the children to live with him at Greenwood, the place where the Craufurd family had been living. She took charge of the house at Greenwood, and sat at the head of the table; she made purchases for the family, and, at the request of Mr. Craufurd, kept his money. She always kept the marriage secret, and never disclosed it until after the death of Dr. David Craufurd; she then disclosed it to Mr. William Hill, who called upon her and asked her about it. He told her he had heard it rumored, and wanted to know the facts from her. She then, for the first time, told all about it to him. Mr. Thomas B. Craufurd was always very kind to her; he sent the children to school, first to Wilson, and afterwards sent the girls to Washington; the school bills were paid by him through her; he gave her the money to pay them; she also frequently purchased goods for the family in Washington and elsewhere; when she went to Washington she went in Mr. Crau-
29 furd's carriage, and he occasionally went with her. When she first went to Greenwood, Dr. David Craufurd came there more frequently than afterwards. She always avoided him when he came, because she knew his dislike to her and the children. Dr. Craufurd ceased visiting Greenwood for some time before the death of Mr. Craufurd, and was not there when he died. She was with Mr. Craufurd at the time of his last attack; he was first attacked on the front porch at Greenwood; while in the act of stooping to wash he fell; she was close by in the house, and was the first one to get to him; this was about 6 o'clock a. m; he was carried into the house and placed upon a bed, and a physician immediately sent for. He rallied partially about one o'clock, and called for Boss; the child was handed to him, but he soon relapsed, and did not again revive that she saw before his death. Boss was the nickname by which he called George T. Craufurd, our child.

When cross-examined this witness further testified that it was over a month after the death of Dr. Craufurd when she communicated her marriage to Mr. William Hill; that she had never before that time told the marriage to any person at all; nor did she tell Mrs. Boone, Thomas Talbert, or Miss Mary Warring, that she was not married. She
30 never heard Mr. Craufurd introduce her as his wife. He did introduce her to strangers, but how he introduced her she does not remember. She did not visit with Mr. Craufurd in the families of the large landed proprietors in the neighborhood, as Drs. Lee and Boyle. When visiting she was sometimes called Mrs. Craufurd, and sometimes Miss Betsey Taylor. In the family of Mr. Judson Jarboe she was addressed as Mrs. Craufurd. Her first intimacy commenced with Mr. Thomas Craufurd about thirty years ago, and it was not under the promise of marriage. About two years after its commencement she went to Monterey. She had six children; the oldest and the youngest are dead, and both died in the lifetime of Thomas B. Craufurd; the oldest was born in June, and died in August. At the time of her marriage she

stayed at her sister's Mrs. Evans. Thomas B. Craufurd did not stay with her. He told her he stayed at Brown's Hotel.

The plaintiffs, further to maintain the issue on their part joined, read in evidence to the jury the testimony of the following-named witnesses, as given in the trial of the aforesaid cause, in Charles County, all
31 of whom, it is admitted, are now dead, as follows:

W'm H. Wilson	record page 55
Nathaniel Tucker	" " 54
James W. Lowe	" " 56
James L. Brashears	" " 55
Charles Ridaway	" " 59
John S. Suit	" " 55
Nathaniel Suit	" " 59

The plaintiff, further to sustain the issues on his part, produced WILLIAM H. WILSON, who, being duly sworn, proves that he resides in Centreville, Prince George's County; that he is a teacher of a school; has educated the children of Mr. Craufurd, possibly all. Mr. Craufurd put them there when they first came. He (the witness) called them Taylor. Mr Craufurd made him change their names, and called them Craufurd, but assigned no reason for the change. Mr. Craufurd furnished their books. He (Craufurd) often came, sometimes twice a week, and brought the children home in his carriage. He was sometimes alone, and sometimes with Mrs. Craufurd. After she came to Greenwood, he, the said witness, was frequently there. Mrs. Craufurd presided at the table, and had the management of everything. He (the said witness) further testified that he was at a party at Monterey. Mr. Craufurd was there. His treatment to Mrs. Craufurd was remarkably
32 kind. He, the witness, saw no difference in treatment from any other man to his wife. He, the witness, further testified that Thomas B. Craufurd had four children, viz: Sarah, George, Mary, and Victoria Ann, and that Mrs. Craufurd told him he had put the girls to school at a Catholic asylum in Washington. Upon a cross-examination this witness testified that Mr. Thomas B. Craufurd called her Betsey, but he always called her Mrs. Craufurd in his, Mr. *Craufurd's* presence.

The plaintiff, further to sustain the issue on his part, produced Mr. NATHANIEL TUCKER, who, being duly sworn, proves that he now resides in Howard County; that he resided in Prince George's County until last year; and this, that he lived near Mr. Tho's B. Craufurd; that he (Craufurd) told him he was married to Elizabeth Taylor, and introduced her as his wife; that she presided at his table; spoke of her as his wife, and the children as his; that he treated them very kindly, as much so as any other father. He, the witness, called her Mrs. Craufurd. He further testified that Tho's B. Craufurd told him the reason he did not bring his wife home was because Dr. Craufurd was living there, but that he (the Dr.) was having a log cabin built, and that after Dr. Craufurd left Greenwood, he brought her home.

33 This witness further testified that he was overseer for Dr. David Craufurd; that Mr. Thomas B. Craufurd's children used to go by his house to school. Dr. Craufurd saw the children coming home, and asked him whose they were. He (the witness) told him that some were his, and some Mr. Thomas B. Craufurd's. Dr. Craufurd then said, "By G—d! think of Thomas Craufurd throwing himself away with a dirty, poor woman." This witness further testified that he sold turkeys to

Thomas B. Craufurd. *Mr.* Craufurd gave money, at his request, to pay for them. They often rode out together, and she presided at his table.

This witness further testified that when Dr. Craufurd's house burnt down he went to live with Thomas B. Craufurd. He further testified that the first conversation with Thomas B. Craufurd in which he spoke of his marriage was before Dr. Craufurd left his house. He (the said Thomas B. Craufurd) said that he did not want his marriage talked of; he did not want Dr. Craufurd to know it until he left his house. This witness, upon cross-examination, testified that the conversation with Dr. Craufurd, while living at his new house, mentioned to Brashears and his brother, was on the first of January or February. The witness does not recollect having mentioned it before Dr. Craufurd's death.

34 The plaintiff, further to maintain the issue on his part, produced JAMES W. LOWE, who, being duly sworn, testified that he knew Mr. T. B. Craufurd and Miss Elizabeth Taylor from the time he was a small boy. When he went away she was at Monterey, and when he returned home was at Greenwood. He called her Betsey, and sometimes madam. She acted as if she was mistress; tried a pair of horses for them. Mr. & Mrs. Craufurd rode out, and when they returned Mr. Craufurd bought them. This witness further testified that Mr. Thomas B. Craufurd was shy of the doctor; told him not to interfere with anything of his; did not wish to make him mad; was present when Mr. Suit paid money; asked if he should pay to him or his wife. This witness does not recollect the answer of Mr. Craufurd, whether he said pay to Betsey, madam, or his wife. They rode out together. He was very kind to her and the children. When she was young she was regarded as a very beautiful woman. When he bought anything he got the money from Mrs. Craufurd by his directions. The transactions about the sale of negroes were 15 years ago. He called her Mrs. Craufurd.

35 The plaintiff, further to sustain the issues on his part, produced JAMES L. BRASHEARS, who, being duly sworn, proves that he knew Mrs. Thomas B. Craufurd; lived with him in the year 1846; sold grain and stock, and paid the money, by his direction, to Mrs. Craufurd; sold two negroes, and paid the money over to the madam. She managed affairs about the house. The said witness further testified that Mr. Craufurd treated her very kindly; called the children his, and was very fond of them; sent them to school; knows he sent the carriage for them. Mr. and Mrs. Craufurd went to Washington; saw them there, and paid money to her. They rode out together. Upon cross-examination this witness further testified that he lived with Thomas B. Craufurd in the year 1846; left in the year 1847, and returned in 1848; never told any body that Thomas B. Craufurd had told him that he was not married. Mr. Bowie spoke of her as Mrs. Craufurd; may have sometimes, towards the last, called her Miss Betsey.

The plaintiff, further to maintain the issues on his part, produced CHARLES RIGEWAY, who being duly sworn, testified that he knew Thomas B. Craufurd from the year 1845. Mrs. Craufurd he knew from the same time, by sight, not personally; has seen her passing in the carriage frequently with him; has seen them frequently passing along the road together to the post office and to school-house for the children.

36 The plaintiff, further to sustain the issues on his part, produced JOHN S. SUIT, who, being duly sworn, proves that he knew Thomas

B. Craufurd all his life; that he did a good deal of business for him after his eyesight became bad, fifteen or seventeen years ago; that he saw him after the operation on his eyes. His servants were pretty bad, and some of them had stolen silver. He (the said witness) told him he ought to have some white person there, and he ought to get married. Mr. Craufurd told him he was married to Betsey Taylor, and had been married for some time, and he was going to bring her to his home when David Craufurd left, which he did. This witness further testified that he bought some servants from Thomas B. Craufurd, and he told him to pay the money to his wife, which he did. This witness further testified that he bought a man for his brother from Thomas B. Craufurd, and he (the witness) paid the money to his wife, by his directions; that Mr. Craufurd treated Mrs. Craufurd as any other man would his wife; that he has been at his table, and his wife presided. Thomas B. Craufurd sent the children to school. This witness further testified that old Mrs. Craufurd lived with Tho's B. Craufurd. He has heard him say that her mind was affected. He says that he did not know Bushrod Craufurd. He died in the asylum at Baltimore. He (the witness) always called her Mrs. Craufurd in the presence of Thomas B. Craufurd. Upon a cross-examination this witness further testified that he frequently heard Thomas B. Craufurd call her his wife, sometimes Betsey. He does not recollect telling any one.

37

The plaintiff, further to maintain the issues on his part, produced NATHANIEL SUIT, who, being duly sworn, testified that he has known Mr. T. B. Craufurd about forty years. He was a son of Nathaniel Craufurd. He lived at Greenwood. Nathaniel Craufurd married Miss Blackburn, of Va. Mr. Craufurd was deranged. Blackburn Craufurd was also deranged, and he carried him to the hospital. Nathaniel died in some queer way, whether from drink or not he does not know. He (the witness) further stated that no member of the Craufurds deranged before intermarriage with the Blackburns. He further states that George T. Craufurd is the only male descendant on the part of the Craufurds from the grandfather, Nathaniel Craufurd, now living. Mrs. Craufurd came to Greenwood about a year after the operation on Mr. T. B. Craufurd's eyes; (went there in 1844.) He (the said witness) was the agent of Mr. Craufurd out of doors. He had to stay by his bedside. He told Craufurd he ought to bring the madam home. He said that Dr. David Craufurd would raise the devil if he did, but as soon as he could get rid of Dr. David Craufurd he would bring her home. He said that he did not like to talk of his being married; told him he had been married for some years; may have eight, or ten, or seven years, to Elizabeth Craufurd. He often spoke of his marriage to him, (the witness;) treated her in the same manner at Monterey as at Greenwood; paid money to him, and sometimes to her, by his directions. She would sometimes chastise (scold) him about having too many friends around him. The witness further stated that he had been at Monterey with Mr. T. B. Craufurd; that he seemed very fond of his wife and children; got money from her. She kept the money generally. Upon cross-examination this witness further testified that he might have said to Gen'l Bowie, there is no use to summon him down there; that he knew nothing about the matter; never said to Gen'l Bowie that Thomas B. Craufurd and Elizabeth Craufurd were not married; never told Gen'l Bowie that T. B. Craufurd got mad because he had advised Mr. Craufurd to marry Elizabeth Taylor, for he had advised him to marry, and he (Mr. Craufurd) replied they were married; proposed to draw notes to give

38

some of the children more than the others by notes; did not finish
39 execution of these notes; does not know what has become of them. Mrs. Norfolk is the first cousin to George T. Craufurd's wife.

Upon reëxamination, this witness further proved that Thomas B. Craufurd said that Betsey and the children were provided for by law.

The plaintiffs then proved, by Mrs. HARRIET FERGUSON, that she is 48 years of age; that the name of her first husband was Stone, and he was the miller at Mr. Thomas B. Craufurd's mill, which was situated about a mile from Greenwood. He often passed by in going to Monterey; and one day witness was joking with him. Mrs. Craufurd was then living at Monterey, and had four children. He said he had been married several years, but did not say to whom. He called Betsey Taylor Mrs. Craufurd, and told witness to pay his wife for things witness had purchased.

The plaintiff's counsel then propounded to said witness the following question: What did you ever hear Mr. Thomas B. Craufurd say in reference to bringing Mrs. Craufurd, otherwise called Elizabeth Taylor, to Greenwood? (it being admitted that Greenwood was the homestead at the time of said Thomas B. Craufurd, as it had been of his father and mother;) and if so, what did he say?

(To which question, the defendants, by their counsel objected;
40 but the court overruled the said objection and allowed the said question to be put and answered. To which ruling of the court the defendants, by their counsel, excepted; and prayed that the court here would sign and seal this their first bill of exceptions; and which is accordingly done this 13th day of May, 1870.)

WILLIAM F. GILES. [SEAL.]

The preceding exception being made a part hereof, the plaintiffs, further to maintain the issue on their part, then proved by the said witness, Mrs. Ferguson, in answer to said question, above excepted to, that Mr. Thomas B. Craufurd said he was going to bring her there; and he did so the same week. The children were always called Craufurd. I sometimes called her Craufurd, and sometimes Miss Betsey.

The plaintiffs then called JAMES J. JARBOE, as a witness further to maintain the issue on their part, who testified that he knew Thomas B. Craufurd, and also knew the late Dr. David Craufurd. He also knew Mrs. Elizabeth Craufurd. He was once at a party at Monterey, and Mr. Craufurd was there; this was while she resided at Monterey, and said Thomas B. Craufurd resided at Greenwood. Witness was at one time postmaster; and Mr. and Mrs. Craufurd often came together to the post office. He remembers that, on one occasion, a letter came addressed to Mrs. E. Craufurd, which he handed to Mr. Craufurd,
41 and he handed it over to her, saying this is for you.

The plaintiffs then read, in evidence, the testimony of Rev. Mr. Boyle, as given on the trial of the said case in Charles County, as follows:

The plaintiff, to maintain the issue on his part, produced the Rev. Mr. BOYLE, who being duly sworn, testified that he was the assistant priest at St. Patrick's Church, in Washington City; that Mr. Walter is the chief pastor; that he has been there for seven years; that the church record of marriages, as far as he has been able to find any, commenced in 1848; baptismal records in 1823; he reads from the record,

"Sarah Jane, natural child of Elizabeth Taylor, born 31st December, 1834, and baptised 30th of August, 1835;" sponsor, Sarah Evans. (Admitted that Mr. Fiziac was at St. Patrick's Church on 30th of August, 1835, as a priest and pastor.) If the entry was the child of Thomas B. Craufurd and Elizabeth Taylor, it would indicate the child was legitimate.

Upon cross-examination, this witness further testified that there is no disciplinary order of the church *of the church* of having licenses, but as the ministers are law-observing men, they generally require the license.

Upon reëxamination this witness further testified that Mr.
42 Thomas F. Bowie, first called upon him; applied last week; came with Mr. McNamee; would marry under the circumstances without license.

Upon reëxamination the Rev. Mr. Boyle testified that if persons living together, and passing as man and wife, were discovered not to be man and wife by him, as a minister he would marry privately and with license to avoid scandal. The book shown is the baptismal register of St. Patrick's Church for the year 1837 and 1838. He reads: 1837, July 30th, George Thomas, son of Thomas Craufurd and Elizabeth Taylor, his wife, born 7th September, 1836. Sponsors, John and Sarah Evans."

The plaintiff then read in evidence the testimony of John F. Callan, as given in the former trial of this case in this court.

And the said plaintiff then produced JOHN F. CALLAN, of Washington City, who being sworn, exhibited a book in manuscript, and proved that the same was the official register of baptisms of St. Patrick's Church aforesaid; and the plaintiff calling his attention to the following entry in said book, he proved that the same was in the handwriting of said Father Fiziac, who was, at the time of the date of said entry, the assistant minister of said church. The plaintiff then offered to read the said entry to the jury, as evidence to fix the date of the
43 alleged marriage, testified to by said Elizabeth Taylor, in connection with the baptism of her second child, Sarah Jane. The defendant objected, but the court overruled the objection, and allowed the said entry to be read to the jury, and it was read accordingly; to which overruling of his said objection, and to the reading of said entry to the jury, as aforesaid, the defendant excepted, and prayed the court to sign and seal this his second bill of exceptions, which is accordingly done this third day of November, in the year 1862.

WILLIAM F. GILES. [SEAL.]

The plaintiff then read in evidence the testimony of JAMES W. LOWE, given on the trial of the said case, in Charles County, as follows:

The plaintiff, further to maintain the issue on his part, produced James W. Lowe, who being duly sworn, testified that he knew Mr. T. B. Craufurd and Miss Elizabeth Taylor, from the time he was a small boy; when he went away she was at Monterey, and when he returned home, was at Greenwood. He called her Betsey, and sometimes madam. She acted as if she was mistress; tried a pair of horses for them. Mr. and Mrs. Craufurd rode out, and when they returned Mr. Craufurd bought them. This witness further testified that Mr. Thomas B. Craufurd was shy of the doctor; told him not to interfere with anything of his;
44 did not wish to make him mad; was present when Mr. Suit paid money; asked if he should pay it to him or his wife. This witness does not recollect the answer of Mr. Craufurd, whether he said pay to

Betsey, madam, or his wife. They rode out together. He was very kind to her and the children; when she was young she was regarded as a very beautiful woman; when he bought anything, he got the money from Mrs. Craufurd, by his directions. The transactions about the sale of negroes were 15 years ago. He called her Mrs. Craufurd.

And proved by WILLIAM W. FOWLER that, in the year 1843, he was on the Greenwood place of Thomas B. Craufurd, being then an apprentice to Mr. Jarboe, and was engaged in putting up a cider mill. Expecting that they would be supplied with meals at Greenwood, they had gone over without carrying food with them. He, witness, went up to the house, and Mr. and Mrs. Craufurd were on the stoop. He addressed her as Betsey Taylor. Mr. Craufurd got angry, and told him "He must not call her Betsey Taylor, she was Mrs. Craufurd, his wife."

The plaintiff then called as a witness, Mrs. SARAH JANE WALL, one of the lessors of the plaintiff, and proved by her, that she the wife of Daniel R. Wall, another of the lessors of the plaintiff, and has been married to him for 14 years; that her sister Victoria, one of the lessors of the plaintiff, is the wife of Philip Hill, another of the lessors of the
45 plaintiff, and they were married about 12 years since; that her eldest sister, Mary E., was married to John E. Sansbury, both of whom are now dead, but left two minor children, Thomas Sansbury and Mary E. Sansbury. George T. Craufurd was brother of witness. He was married, but is now dead, and left children now living. She further stated, that she, the witness, was born on the 1st September, 1836; that she lived at Greenwood with her father, Thomas B. Craufurd, and her mother, Elizabeth, otherwise called Elizabeth Taylor; and saw him about 2 months before he died, and was there when he died. Witness always went by the name of Craufurd in his lifetime, and was so called in his presence. My sisters and I were at St. Joseph's school, in Georgetown; and on one occasion my father and mother were conversing, at Greenwood, in my presence, when my father, the said Thomas B. Craufurd, said the children should be Catholics, as she, my mother, had always inclined that way, and they had been married at St. Patrick's Church, in Washington.

The said witness, on cross-examination, stated that she never mentioned to any person the facts to which she has now testified, until about a week since, when she was called on at her house by a young man from the office of Mr. Robert J. Brent, one of the counsel of plaintiff, who had an office in Washington, where she and her husband resided; that said young man said to her that Mr. Brent wished to see her at his office, whither she went with her husband, and being
46 questioned by said counsel on the subject, she then stated the facts now given in evidence, and she had never been questioned by any one before, or examined as a witness in any previous trial.

The plaintiffs here rested their case.

The defendants to maintain the issue on their part joined, then offered in evidence to the jury, the will of said Tho's B. Craufurd, and the probate thereof, as follows:

Will of Thomas B. Craufurd.

In the Name of God, amen. I, Thomas B. Craufurd, of Prince George's County, Maryland, being apprehensive of death, but of sound and dis-

posing mind, memory, and understanding, and being anxious, before I die, to settle and dispose of all my estate by last will and testament:

In the first place, I desire all my just debts and funeral charges to be paid by my executor hereinafter named, and after their payment, I will and devise as follows:

I will, devise, and give unto George Thomas Craufurd, my natural son by Elizabeth Taylor, now about eight years old, the one-half of my entire landed estate, to be laid off to him, so as to include the dwelling-house and the out-houses attached thereto at Greenwood, where I now
47 reside, to him, the said George T. Craufurd, his heirs, and assigns, in fee simple for ever.

Also, I will, devise, and give the other moiety or half of all my landed estate to Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my natural children and daughters by the said Elizabeth Taylor, to be equally divided between them, share and share alike, to them their heirs and assigns forever, as tenants in common. I give and bequeath unto the said George Thomas Craufurd, my aforesaid son, the one-half of all my negroes and other personal estate of every description whatever, including debts due to me and every description of personal property whatever, to him, the said George Thomas Craufurd, his executors, administrators, and assigns.

The other half of my negroes and personal estate of every description as aforesaid whatever, I give and bequeath unto the aforesaid Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my aforesaid natural children and daughters by the said Elizabeth Taylor, to be equally divided among them, share and share alike.

And whereas, in all probability the said Elizabeth Taylor may be now pregnant with child by me, I further devise and will that, in case such child shall be born after my death, that then, and in that event,
48 said child shall have an equal share with my aforesaid daughters in all that half of my real and personal estate which I have hereinbefore devised and bequeathed to them.

I further will and devise, and I do hereby direct that Elizabeth Taylor, the mother of my aforesaid children, shall live and have her home at Greenwood with the aforesaid children, so long as she shall live single and unmarried; and lastly, I do hereby constitute and appoint my friend Thomas T. Bowie to be sole executor of this my last will and testament, and guardian to my aforesaid children for and until they shall respectively arrive to full age.

In testimony whereof I have hereunto set my hand and mark, not being able to write my name in consequence of a paralytic attack in my right arm by which I have lost the use of it, and affix my seal this twenty-second day of July, in the year of our Lord one thousand eight hundred and fifty-four.

his
THOMAS × B. CRAUFURD. [SEAL.]
mark.

Signed, sealed, published, and declared by Thomas B. Craufurd as and for his last will and testament, in our presence; and at his request, in his presence and in the presence of each other we have subscribed our names as witnesses thereto.

BENJ. L. GANTT.
49 W. BOWIE BROOKE.
G. B. STONE.

PRINCE GEORGE'S COUNTY, *sct:*

APRIL 4TH, 1848.

Then came Benj. Gantt and George B. Stone, two of the subscribing witnesses to the within will of Thomas B. Craufurd, late of Prince George's County, deceased, and made oath on the Holy Evangely of Almighty God that they did see the testator herein named sign and seal this will, and him publish, pronounce, and declare the same to be his last will and testament; that, at the time of so doing, he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding; that they, together with W. Bowie Brookes, the other subscribing witness, respectively subscribed their names as witnesses to this will in the presence of the testator, at his request, and in the presence of each other.

Sworn before—

JAMES HARPER,
Reg. of Wills, P. G. County.

The defendant then offerred in evidence the testimony of the late Gen'l THOMAS F. BOWIE, given by him at the former trial of this cause in this court, it being admitted that he has since departed this life; and the defendants then read in evidence, without objection, the
50 testimony given by said Bowie at said trial, and then received in evidence, as follows:

And the said defendant then produced Thomas F. Bowie, one of the attorneys of the defendant in this action, a competent witness, and gave in evidence by him that the body of said last will, with the exception of the words "Thomas F. Bowie" in the clause appointing him executor, and the date of said paper, is in the handwriting of said witness, and that he was present at the execution of said will by Thomas B. Craufurd, and at the attestation thereof by the subscribing witnesses; and that the said words, "Thomas F. Bowie," and the date aforesaid, were inserted in said last will by Benjamin L. Gantt, one of the said subscribing witnesses, by direction of said testator, and just before the execution of said will, and that said will was executed on the day of the date thereof.

The witness further testified that, about three weeks prior to the execution of said last will, the said Thomas B. Craufurd came to the law office of said witness, in Upper Marlborough, and had a conversation with witness concerning the proper disposition of his property, so as to secure the same to his children, the lessees of the plaintiff, and asked the advice of said witness on the subject; that subsequently, on
51 the same day, said Thomas B. Craufurd went, with and by the invitation of the witness, to the residence of the witness and took dinner with him; that he, the witness, had been for many years before that time, and continued up to the death of said Craufurd, to be his legal adviser, and had been employed by said Craufurd in all suits in which he had been interested, and has no doubt that if other controversies had arisen, the witness would in like manner have been retained by said Craufurd as his counsel; but that the said witness had no general retainer to appear in all cases for said Craufurd, and witness supposed that, on the occasions referred to, the said Craufurd rather addressed him as a friend than as counsel, and witness advised with said Craufurd very freely on the subject; but the result of the conversation on the said occasion, and of the advice then given by him and finally accepted by said Craufurd, was the preparation by witness of the draft of said last will, prepared by witness in pursuance of the advice so by him

given in the course of said conversation, and of the instructions of said Craufurd, given to witness after the acceptance of said advice; and that the witness charged and received from said Craufurd a fee of fifty dollars for his advice so as aforesaid given to said Craufurd on the said occasion, and for the preparation of said will.

52 The defendant then proposed to read in evidence in this case the defendant's offer, on said former trial, to give in evidence by said Bowie, (who, it was admitted, was, at the time, one of the counsel for Blackburn, the original defendant in this case, and that the said witness was then on the stand under examination as a witness,) the matters and things set forth in detail in the defendant's seventh bill of exception, taken on said former trial, as follows:

That, in the course of his conversation, said Craufurd produced to the witness drafts of promissory notes, signed by said Craufurd, for the payment of large sums of money to his aforesaid children, the lessees of the plaintiff, and stated that he had been advised to make said promissory notes by some one or other of his friends as provisions for his said children, and asked witness what he thought of it; that witness believed that the said Elizabeth Taylor was no more than the mistress of said Craufurd, and that his children by said Elizabeth Taylor were illegitimate, and his advice to said Craufurd was given on that hypothesis; that witness objected to said promissory notes as provisions for said children, as they might lead to difficulties between said children and Craufurd's relations, and explained to said Craufurd that

53 there were three modes by which the said Craufurd might safely provide for said children, to wit: By deed of his property, reserving a life-estate to himself, or by last will, or by marrying said Elizabeth Taylor and legitimatizing said children; and witness *and witness* strongly expressed his preference for the last-named expedient; that said Craufurd, however, rejected the proposition that he should marry said Elizabeth Taylor at once, and with great warmth declared that he would never marry her; and thereupon the witness advised said Craufurd to make a will, and so provide for his children; and in accordance with said advice said Craufurd directed witness to prepare the draft of said will, which the said witness accordingly then did, agreeably to the instructions of said Craufurd; and said Craufurd especially instructed said witness in said will to describe the said children as his natural children by the said Elizabeth Taylor; and that, in consequence of this express direction of said Thomas B. Craufurd, the said children were described in said will as his natural children.

But the counsel for the plaintiff objected to the admission of said offer, or any part thereof, on the ground that, as said offer was rejected, it was not any part of the evidence given by said Bowie. And

54 the court sustained the said objection, and refused to permit said offer, or any part thereof, to be read to the jury; to which refusal the defendants, by their counsel, excepted, and prayed that the court here would sign and seal this their second bill of exception; and which is accordingly done this 13th day of May, 1870.

WILLIAM F. GILES. [SEAL.]

After the ruling stated in the preceding exception, made a part hereof, the defendants then read in evidence to the jury the following bill of sale from Daniel R. Wall, one of the lessors of the plaintiff, to said Elizabeth Taylor:

Know all men by these presents that I, Daniel R. Wall, of Prince

George's County, in the State of Maryland, for and in consideration of the sum of ten dollars, current money, to me in hand by Elizabeth Taylor, of the county and State aforesaid, at and before the sealing and delivery of these presents, the receipt whereof I, the said Daniel R. Wall, do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Elizabeth Taylor, her executors, administrators, and assigns, the following property hereinafter mentioned, that is to say, one wagon and harness; one large bay horse, about nine years old; one sorrel horse, about twelve years
55 old; all and singular which said property are now remaining, standing, and being in my possession: To have and to hold all and singular the said property and other the premises bargained and sold, or mentioned and intended so to be, to the said Elizabeth Taylor, her executors, administrators, and assigns forever. And I, the said Daniel R. Wall, for myself, my heirs, executors, and administrators, all and singular the said property and premises unto the said Elizabeth Taylor, her executors, administrators, and assigns, against me, the said Daniel R. Wall, my executors, administrators, and against all and every other person or persons whatsoever, shall and will warrant and forever defend by these presents, of all and singular which said property and other the premises I, the said Daniel R. Wall, have put the said Elizabeth Taylor in full possession by delivery to her, the said Elizabeth Taylor, one sorrel horse, at the sealing and delivery of these presents, in the name of the whole premises hereby bargained and sold, or mentioned and intended so to be, unto the said Elizabeth Taylor as aforesaid.

In witness whereof I have hereunto set my hand, and affixed my seal, this 20th day of March, anno Domini 1857.

D. R. WALL. [SEAL.]

Signed, sealed, & delivered in the presence of—
T. R. BROOKS.

56 Also a bill of sale from George T. Craufurd, one of the original lessors of the plaintiff, to said Elizabeth Taylor:

Know all men by these presents that I, George T. Craufurd, of Prince George's County, in the State of Maryland, for and in consideration of the natural love and affection which I have towards my mother, Elizabeth Taylor, and for the purpose of securing her better maintenance and support, have given, granted, transferred, assigned, and conveyed, and do by these presents give, grant, transfer, assign, and convey unto the said Elizabeth Taylor, her executors, administrators, and assigns, negro girl Amelia, aged about 16 years, a slave for life, and I hereby warrant and defend the said negro girl to be a slave for life, and the full and entire property of the grantee herein named, according to the object and true intent hereof.

In witness whereof I have hereunto set my name and affixed my seal this 12th day of November, one thousand eight hundred and fifty-six.

GEORGE T. CRAUFURD. [SEAL.]

Signed, sealed, and delivered in presence of—the words Amelia and November being first interlined—
DANIEL C. DEGGES.
C. R. BENSON.

57 Also a bill of sale from Anna V. Craufurd to said Elizabeth Taylor, it being admitted that said Anna V. Craufurd is now Anna V. Hill, one of the lessors of the plaintiff:

STATE OF MARYLAND,
Prince George's County, set:

I, Anna V. Craufurd, of the State and county aforesaid, in consideration of the sum of three hundred and fifty dollars, paid me by Elizabeth Taylor, otherwise called Elizabeth Craufurd, of the State and county aforesaid, do hereby bargain and sell to the said Elizabeth Taylor, otherwise called Craufurd, as aforesaid, the following property, to wit:

One negro boy, George Lee, aged about nine years, and a slave for life.

Witness my hand and seal this 26th day of July, eighteen hundred and fifty-eight.

Test: ANNA V. CRAUFURD.

The defendant then offered in evidence the following deed from George T. Craufurd and wife, and said Elizabeth Taylor, otherwise called Elizabeth Craufurd, to William Z. Beall:

Deed from George T. Craufurd to William Z. Beall.

58 This deed, made this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-eight, by George T. Craufurd, and Josephine Craufurd, his wife, and Elizabeth Taylor, otherwise called Elizabeth Craufurd, the natural mother of the said George T., all of Prince George's County, in the State of Maryland, witnesseth: That, for and in consideration of the sum of fifteen thousand two hundred and fifty dollars current money of the United States, paid, and secured to be paid, by William Z. Beall, of said State and county, at and before the sealing and delivery of these presents to the parties of the first part hereto, which is hereby acknowledged, the said parties of the first part do hereby give, grant, and sell unto the said William Z. Beall, in fee-simple, all their right, title, interest, and estate, at law and in equity, whether under the last will and testament of Thomas B. Craufurd, deceased, or otherwise, to the said parties of the first part, devised of, in, and to, all that portion of the real estate of the late Thomas B. Craufurd, now in the possession of the said George T. Craufurd, all that portion of lot number one, as designated and laid down by the survey of *and* commissioners heretofore appointed to divide the real estate of Thomas B. Craufurd among his devisees, in fee, as will appear by the record of the proceedings in the cause of Thomas T. Bowie,
59 guardian to George T. Craufurd and others, complainants, and John H. Sansbury, and Mary E, his wife, defendants, now of record in the circuit court for Prince George's County, sitting as a court of equity, and by the final decree thereon, and which has not been heretofore sold and conveyed by the said George T. Craufurd and his wife, to one Albert B. Berry, of said county, supposed to contain and include for the property hereby conveyed, the quantity of two hundred acres, more or less, so as to include the dwelling-house and out-houses on said estate. And the said parties of the first part do hereby covenant and agree to and with the said party of the second part that they will jointly and severally warrant and defend unto him, the said party of the second part, all the aforesaid two hundred acres of land, being part of lot No. 1, as aforesaid, against all and every person or persons claiming the

same, or any part thereof, by, through, from, or under them, or any of them. And the said parties of the first part do hereby further covenant and agree with the said party of the second part, that they will jointly and severally hereafter execute, acknowledge, and deliver to the said party of the second part, such deed or deeds as his counsel, learned in the law, may require or advise for the more effectual conveying and assuring to him, the said party of the second part, in fee-simple, a clear and unencumbered title to the said two hundred acres of land, free, clear, and discharged of any liens, judgments, or mortgages created thereon by the said George T., either by himself or in coöperation with his aforesaid wife, or mother, or of any potential right of dower therein, which does now, or may hereafter, be supposed to belong to his aforesaid wife, the said Josephine Craufurd, or of any right, estate, or interest which the said Elizabeth Taylor, otherwise called Craufurd, the natural mother of said George T., and a party grantor to this deed, may be entitled to under the last will and testament of the said Thomas B. Craufurd, or otherwise.

60

In testimony whereof the parties hereunto have set their hands and seals the day and year first hereinbefore written.

GEORGE T. CRAUFURD. [SEAL.]
JOSEPHINE CRAUFURD. [SEAL.]
ELIZABETH (her mark) × CRAUFURD. [SEAL.]

Witnesses:
JOHN B. HILL.
LIBBRUM MITCHELL.

Witnesses to the signature of Elizabeth Taylor, otherwise called Elizabeth Craufurd:
DANIEL C. DIGGS.
JOHN H. SANSBURY.

61 The defendants then proposed to read in evidence to the jury the record of proceedings in the case of the appeal of George T. Craufurd, one of the original lessors of the plaintiff, on the issues joined in the orphans' court of Prince George's County, between said George T. Craufurd and Richard S. Blackburn, the original defendant in this suit, as follows:

In the orphans' court for Prince George's County, January 17th, 1860.

RICHARD S. BLACKBURN
vs.
GEORGE *F.* CRAUFURD.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

The petition of Richard S. Blackburn for grant of letters of administration on the personal estate of David Craufurd, filed January 12th, 1860. George T. Craufurd's petition for *George T. Craufurd's petition for* letters of administration on the personal estate of David Craufurd, filed January 13th, 1860.

Continued to January 24th, 1860.

In the orphans' court for Prince George's County, January 24th, 1860.

62 RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

The petition of Richard S. Blackburn for grant of letters on the personal estate of David Craufurd, filed January 12th, 1860.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

The petition of George T. Craufurd for grant of letters of the personal estate of David Craufurd, filed January 13th, 1860.

R. S. Blackburn' answer to George T. Craufurd, together with Exhibit A, B, & C, filed January 17th, 1860.

George T. Craufurd' answer *answer* to petition of R. S. Blackburn, filed January 17th, 1860.

To the honorable the justices of the orphans' court of Prince George's County, Maryland:

The petition of Richard S. Blackburn respectfully shows that, on or about the fifth day of December, eighteen hundred and fifty-nine, a certain Doctor David Craufurd, of this county and State, departed this life intestate, leaving a very large real and personal property; that the said David Craufurd was never married, and left neither widow, or
63 child, or children, or grandchild, or father, or brother, or sister, or mother, so that his next of kin, of inheritable blood, are entitled to the said estate, and to administration thereon, according to the rules of law and the practice of this court. Your petitioner further shows that a certain Nathaniel Craufurd, the father of the said David Craufurd, intermarried with one Sarah Blackburn, the sister of your petitioner's father, and had, as the issue of that marriage, the said David Craufurd, Nathaniel Craufurd, Jos. Bushrod Craufurd, Thomas B. Craufurd, and Marian Craufurd, all of whom are dead, and died without ever having been married or leaving any issue of inheritable blood. Your petitioner, and certain other persons, male and female, living in the State of Virginia, and the District of Columbia, stand in the relation of first cousin to the said David Craufurd, deceased, and as such are entitled, as the next of kin of inheritable blood, to the said estate, both real and personal, left by him; and your petitioner avers that he is the eldest male heir and distributee of said estate, and is therefore entitled to letters of administration thereon; he prays, accordingly, most respectfully, that your honors may direct letters of administration on the personal estate of the said David Craufurd, deceased, to be granted unto him; and, in duty bound, he will ever pray, &c.

64 R. S. BLACKBURN.

The honorable the judges of the orphans' court of Prince George's County:

The answer of George T. Craufurd to the petition of Richard S. Blackburn exhibited in said orphans' court against your respondent.

This respondent, answering under oath, admitted that Dr. David Blackburn departed this life at the time therein stated, intestate, and without issue, and was never married; that he left neither widow, or a

child or children, or grandchild, or father, or brother, or sister, or mother. This respondent admits that the next of kin of the said David Craufurd are entitled to the estate left by him, which is very large and valuable, and consists both of real and personal*ly*. Your respondent admits that Nathaniel Craufurd, the father of the said David Craufurd, intermarried with one Sarah Blackburn, who was sister to the father of the petitioner, Richard S. Blackburn, and that the issue of that marriage is properly named and described in the petition; that Thomas B. Craufurd, one of the children or issue of the said Nathaniel Craufurd and the above-named Sarah Craufurd his wife, departed this life in the year 1848, having previously intermarried with Eliza-
65 beth Taylor, and had, as the issue of that marriage, your petitioner and his three sisters, now living, who are the next of kin of the said David Craufurd. Your respondent admits that all the children of the said Nathaniel Craufurd are dead, but denies that all of them died without ever having been married or having any issue of inheritable blood; but avers and insists and is prepared to prove upon the trial of the proper issues, to be sent down to the circuit court for Prince George's County from this honorable court, that the said Thomas B. Craufurd, a child of the said Nathaniel Craufurd, and a brother of the full blood of the said David Craufurd, deceased, intermarried with Elizabeth Taylor, and that your respondent and his three sisters are the issue of said intermarriage, the next of kin to the said David Craufurd, deceased, and as such are entitled under the law to the said estate.

Your respondent denies that the said Richard S. Blackburn is the next of kin to the said David Craufurd, and therefore he is not entitled to any portion of the said estate, or to letters of administration on the said personal estate, but insists that he, your respondent, is the oldest male heir and next of kin of the said David Craufurd, and as such is clearly entitled to letters of administration on the personal of the said David Craufurd, &c., &c.

GEO. T. CRAUFURD.

66 PRINCE GEORGE'S COUNTY, *to wit:*

On this 17th day of January, 1860, before the subscriber, a justice of the peace of the said county, personally appeared George T. Craufurd, and made oath, on the Holy Evangely of Almighty God, that the facts contained in the foregoing answer are true as stated, to the best of his knowledge and belief.

Sworn before—

C. R. BENSON, *J. P.*

To the honorable the judges of the orphans' court of Prince George's County:

The petition of George T. Craufurd, of said county, *of said county*, respectfully represents unto you' honors, that David Craufurd, late of said county, deceased, departed this life on the fifth day of December, one thousand eight hundred and fifty-nine, intestate, leaving a very large real and personal estate; that the said David Craufurd never was married, and left neither widow, or a child or children, or grandchild, or father, or brother, or sister, or mother, so that his next of kin of inheritable blood are entitled to said estate and the administration thereon, according to the rule of law and the practice of this court.

Your petitioner further shows that a certain Thomas B. Crau-

67 furd, brother of the said *said* David Craufurd, departed this life some time in the year one thousand eight hundred and forty-eight, all their other brothers and sisters having previously thereto died intestate, and without issue, and never having married; that the said Thomas B. Craufurd intermarried with one Elizabeth Taylor, and had as the issue of that intermarriage the following children, to wit: Mary E. Craufurd, now the wife of John H. Sansbury; Sarah I. Craufurd, now the wife of Daniel R. Wall; your petitioner, George T. Craufurd, and Ann Victoria Craufurd, now the wife of Philip Hill, j'r; all of whom are residents of said county. That your petitioner and his said sisters are the nephew and nieces of the said David Craufurd, deceased, and as such are entitled, as his next of kin, to the said estate, both real and personal, left by the said David Craufurd, deceased; and your petitioner avers that he is the eldest male and distributee of said estate, and is therefore entitled to letters of administration thereon.

Your petitioner thereupon most respectfully prays your honors may direct letters of administration on the personal estate of said David Craufurd, deceased, to be granted unto him, and, as in duty bound, he will ever pray, &c.

68

D. C. DIGGES,
L. H. BERRY,
EW'D W. BELT,
W'M I. HILL,
For Petitioner.

In the orphans' court of Prince George's County.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

Cross-petition for letters of administration on the personal estate of David Craufurd, deceased.

GEORGE T. CRAUFURD
vs.
RICHARD S. BIACKBURN.

The answer of Richard S. Blackburn to the petition of George T. Craufurd for letters of administration on the personal estate of David Craufurd, deceased, heretofore filed in this court.

To the honorable the justices of the orphan's court of Prince George's County, Maryland:

The respondent, who is one of the next of kin of the said David Craufurd and the eldest male heir of inheritable blood to his estate,
69 both real and personal, by way of answer to the petitio*ner* of the said George T. Craufurd, respectfully states, that he admits that the said David Craufurd departed this life on or about the fifth day of December last, leaving a very large real and personal estate.

He also admits that the said David Craufurd was never married, and died without issue, leaving neither a widow, or a child, or children, or grandchild, or father, or brother, or sister, or mother, so that his next of kin of inheritable blood are entitled to his estate, and the administration thereon, according to the rule and principles of law in such cases.

The respondent, further answering, says that a certain Nathaniel Craufurd, the father of the said David Craufurd, intermarried with one Sarah Blackburn, the aunt of this respondent, and a sister of this respondent's father; that they have both long since departed this life, leaving as the issue and fruits of said marriage, the said Dr. David Craufurd, Nathaniel Craufurd, jr., Bushrod Craufurd, Thomas B. Craufurd, and Marian Craufurd; that the said Nathaniel Craufurd, jr., Bushrod Craufurd, Thomas B. Craufurd, and Marian Craufurd were married, and each and all of them died, without leaving any lawful children or inheritable issue; so that the only persons now in existence who
70 are next of kin and lawful heirs of the said David Craufurd, are your respondents, a first cousin and eight or ten other persons, who are also first cousins, living now in the State of Virginia, and District of Columbia, and elsewhere, all of whom, as the said next of kin, are entitled to the said estate, both real and personal; and your respondent, who is the eldest male heir, is entitled to letters of administration on the said personal estate; all of which said averments this respondent is ready to prove whenever required. Further answering this respondent admits that the said Thomas B. Craufurd, the brother of the said David Craufurd, and the reputed father of the said George T. Craufurd, Mary E. Sansbury, Sarah Wall, and Anna V. Hill, mentioned in the said petition, departed this life some time in the month of March, in the year eighteen hundred and forty-eight; but he utterly and positively denies that the said Thomas B. Craufurd in his lifetime ever intermarried with the said Elizabeth Taylor, the mother of the said petitioner and her other named children, but, on the contrary, this respondent avers, that the said petitioner George T. Craufurd, and the other mentioned children, are illegitimate and the natural children of the said Elizabeth Taylor, born out of lawful wedlock with the said Thomas B. Craufurd, or any other person, and, as such
71 illegitimate and natural children, have no inheritable blood of the said Thomas B. or David Craufurd, deceased, and are not entitled to any portion of the said David Craufurd's estate, or to administration thereon.

In confirmation of these facts, this respondent states that, on the 22nd day of July, in the year 1844, the said Thomas B. Craufurd executed his last will and testament, which was duly admitted to probate in the orphans' court of Prince George's County, on the fourth day of April, 1848, shortly after the death of the said Thomas B. Craufurd, in which he devises and bequeaths all his real and personal estate to his aforesaid children, describing them as his natural children by the said Elizabeth Taylor, all of which will fully appear by reference to the said last will and testament, a correct and true copy of which is herewith filed, marked Exhibit A, and which this respondent prays may be taken and considered as a part of his answer. Further answering, this respondent says that, by the said last will and testament of the said Thomas B. Craufurd, a certain Thomas F. Bowie, of said county, was made and appointed executor and guardian to the aforesaid natural children of him, the said Thomas B. Craufurd. That, on the 15th April, 1848, letters testamentary were granted by the orphans' court of said county
72 to the said Thomas F. Bowie. That, on the 17th June, in the year 1856, the said Bowie passed his final account as executor, and on the 5th of January, 1857, a full and final distribution of the said estate was made, as directed by said will, among the said natural children of Thomas B. Craufurd, as may be fully seen by reference to the proceedings of the orphans' court aforesaid; and that during all this time they

have held their respective portions of said estate in the character and under the description contained in said will, and no pretence set up during all that time, either by the said Elizabeth Taylor, or any one of the children, that she was ever lawfully married to the said Thomas B. Craufurd, and this respondent avers that no such pretended marriage was ever set up or mentioned until after the death of the said Dr. David Craufurd; and in confirmation of this, your respondent refers to the following exhibits, marked B and C, herewith filed, being true copies of sundry deeds now of record among the land records of Prince George's County, by and between the said Elizabeth Taylor and her children, and others, in which said deeds the said Elizabeth Taylor is described as the natural mother, and the said children as the natural children of the said Thomas B. Craufurd; all of which said exhibits this re-
73 spondent prays may be taken and considered as a part of this answer.

This respondent insists that, after so long and repeated acquiescence by the said Elizabeth Taylor, and the said George T. Craufurd in the true character of the said George's paternity, and in her true relation to the said Thomas B. Craufurd in his lifetime, it is now too late for either of them to question the illegitimacy of the said children of the said Elizabeth Taylor; and this respondent is advised that, by their said conduct, acts, and declarations, they are now estopped from setting up any such pretended marriage as the one set forth and relied on in the petition of the said George T. Craufurd.

This respondent, having fully answered the said petition, prays that the same may be dismissed, and that letters of administration on the personal estate of David Craufurd, deceased, may be granted unto him, as the eldest male heir, being next of kin; and, as in duty bound, he will ever pray, &c., &c.

RICHARD S. BLACKBURN.

STATE OF MARYLAND,
Prince George's County, set:

Be it remembered that, on this 17th day of January, 1860, personally appeared before me, the subscriber, one of the State's justices of
74 the peace in said county, Dr. Richard S. Blackburn, the respondent in the foregoing answer, and made oath on the Holy Evangely of Almighty God that the matter and things set forth and contained in the foregoing answer are true, to the best of his knowledge and belief.

Sworn before—

C. R. BENSON, *J. P.*

EXHIBIT A.

In the name of God, amen. I, Thomas B. Craufurd, of Prince George's County, in the State of Maryland, being apprehensive of death, but of sound and disposing mind, memory, and understanding, and being anxious before I die to settle and dispose of all my estate by last will and testament, do hereby make and publish this as my last will and testament.

In the first place, I desire all my just debts and funeral charges to be paid by my executor, hereinafter named, and after their payment I will and devise as follows:

I will, devise, and give unto George Thomas Craufurd my natural son by Elizabeth Taylor, now about eight years old, the one-half of my entire landed estate, to be laid off to him so as to include the dwelling-

house, all the out-houses attached thereto, at Greenwood, wherein
75 I now reside, to him, the said George T. Craufurd, his heirs and assigns, in fee simple, forever.

Also, I will and give the other moiety, or half of all my landed estate to Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my natural children and daughters by the said Elizabeth Taylor, to be equally divided between them, share and share alike, to them, their heirs and assigns forever, as tenants in common.

I give and bequeath unto the said George Thomas Craufurd, my aforesaid son, the one-half of all my negroes and other personal estate, of every description whatever, to him, the said George Thomas Craufurd, his executors, administrators, and assigns. The other half of my negroes and personal estate of every description as aforesaid, whatever, I give and bequeath unto the aforesaid Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my aforesaid natural children and daughters by the said Elizabeth Taylor, to be equally divided among them, share and share alike.

And whereas, in all probability, the said Elizabeth Taylor may be now pregnant with child by me, I further will and devise that, in case such child shall be born after my death, that then and in that
76 event, said child shall have an equal share with my aforesaid daughters in all that half of my real and personal estate which I have hereinbefore devised and bequeathed to them.

I further will and devise, and do hereby direct, that Elizabeth Taylor, the mother of my aforesaid children, shall live and have her home at Greenwood so long as she shall live single and unmarried.

And lastly, I do hereby constitute and appoint my friend Thomas F. Bowie to be sole executor of this my last will and testament, and guardian to my aforesaid children for and until they shall respectively arrive to full age.

In testimony whereof I have hereunto set my sign and mark, (not being able to write my name in consequence of a *paryletic* attack in right arm, by which I have lost the use of it,) and affix my seal this twenty-second day of July, in the year of our Lord one thousand eight hundred and forty-four.

THO'S $\overset{\text{his}}{+}_{\text{mark.}}$ B. CRAUFURD. [SEAL.]

Signed, sealed, published, and declared by Thomas B. Craufurd, as and for his last will and testament, in our presence; and, at his request, in his presence and the presence of each other, we have subscribed our names as witnesses thereto—
77 BENJ. L. GANTT.
W. BOWIE BROOKE.
G. B. STONE.

APRIL 4, 1848.

PRINCE GEORGE'S COUNTY, *set:*

Then came Benj. L. Gantt and George B. Stone, two of the subscribing witnesses to the within will of Thomas B. Craufurd, late of Prince George's County, deceased, and made oath on the Holy Evangely of Almighty God that they did see the testator herein-named sign and seal this will, and heard him publish, pronounce, and declare the same to be his last will and testament; that at the time of his so doing he was, to the best of their apprehensions, of sound and disposing mind, memory, and un-

derstanding; and that they, together with W. Bowie Brooke, the other subscribing witness, respectfully subscribed their names as witnesses to this will, in the presence of the testator, at his request, and in the presence of each other.

Sworn before—

JAMES HARPER,
Reg. of Wills of Prince George's County.

PRINCE GEORGE'S COUNTY, *sct:*

I, William A. Jarboe, register of wills for the county aforesaid, in the State of Maryland, do hereby certify that the aforegoing is a true
78 copy of the last will and testament of Thomas B. Craufurd, late of said county, deceased, duly approved according to law, and now upon record remaining in my office.

{ ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. } In testimony whereof I have hereunto set my hand and affixed the seal of the orphans' court for Prince George's County, this 12th day of January, 1860.

WILLIAM A. JARBOE,
Reg. of Wills for P. G. County.

EXHIBIT B.

Know all men by these presents that I, George T. Craufurd, of Prince George's County, and State of Maryland, for and in consideration of the natural love and affection which I have towards my mother, Elizabeth Taylor, and for the purpose of securing her better maintenance and support, have given, granted, transferred, assigned, and conveyed, and do by these presents give, grant, assign, and convey unto the said Elizabeth Taylor, her executors, administrators, and assigns, negro girl Amelia, aged about sixteen years, a slave for life, and the full and entire property of the grantee herein-named, according to the effect and true intent thereof.

In witness whereof, I have hereto set my hand and affix'd my
79 seal, this 12th day of November, one thousand eight hundred and fifty-six.

GEO. T. CRAUFURD. [SEAL.]

Signed, sealed, and deliver'd in the presence of—the words "Amelia" an' "November" being first interlined—

D. C. DIGGES.
CEPHUS R. BENSON.

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing is truly taken and copied from liber C. S. M. No. 1, fol. 410 and 411, one of the land record books of said county.

{ CIRCUIT COURT OF PRINCE GEORGE COUNTY. [SEAL.] } In testimony whereof I have hereunto subscribed my name and affix'd the seal of the circuit court for Prince George's County, this thirteenth day of January, anno Domini one thousand eight hundred and sixty.

CHARLES S. MIDDLETON,
Clerk of the Circuit Court for P. G. County.

EXHIBIT C.

80 Know all men by these presents that I, Daniel R. Wall, of Prince George's County, in the State of Maryland, for and in consideration of the sum of ten dollars, current money, to me in hand paid by Elizabeth Taylor, of the county and State aforesaid, at and before the sealing and delivery of these presents, the receipt whereof I, the said Daniel R. Wall, do hereby acknowledge, have bargained, granted, and sold, and by these presents do bargain, grant, and sell unto the said Elizabeth Taylor, her executors, administrators, and assigns, the following property hereinafter mentioned, that is to say, one wagon and harness, one large bay horse about nine years old, one sorrel horse about twelve years old, all and singular, which said property are now remaining, standing, and being in my possession.

To have and to hold all and singular the said property, and other the premises above bargained, and sold or mentioned, and intented so to be, to the said Elizabeth Taylor, her executors, administrators, and assigns forever. And I, the said Daniel R. Wall, for myself, my heirs, executors, and administrators, all and singular the said property and premises unto the said Elizabeth Taylor, her executors, administrators, and assigns against me, the said Daniel R. Wall, my executors
81 and administrators, and against all and every other person or persons whatsoever, shall and will warrant, and forever defend by these presents, of all and singular, which said property and other the premises, I, the said Daniel R. Wall, have the said Elizabeth Taylor in full possession, by delivering to her, the said Elizabeth Taylor, one sorrel horse, at the sealing and delivery of these presents, in the name of the whole premises hereby bargained and sold or mentioned, and intended so to be, unto the said Elizabeth Taylor aforesaid.

In witness whereof I have hereunto set my hand and affixed my seal this 20th day of March, anno Domini 1857.

D. R. WALL. [SEAL.]

Signed, sealed, and delivered in the presence of—
THOMAS R. BROOKS.

STATE OF MARYLAND,
Prince George's County, sct:

Be it remembered, and it is hereby certified that, on this 20th day of March, eighteen hundred and fifty-seven, before the subscriber, one of the justices of the peace of the county and State aforesaid, personally appeared Daniel R. Wall, he being known to me to be the person
82 who is named and described as, and professing to be, a party to the aforegoing bill of sale or instrument of writing, and doth acknowledge the said instrument of writing to be his act and deed; and also at the same time and place, came before me, the subscriber, a justice as aforesaid, Elizabeth Taylor, and made oath on the Holy Evangely of Almighty God, that the aforegoing bill of sale is just and bona fide, and the matter and things therein set forth is true and bona fide set forth.

Given under my hand and seal the day and year aforesaid.

THOMAS R. BROOKS, *J. P.* [SEAL.]

Enrolled 21st day of March, 1857.

Circuit court for Prince George's County, Maryland.

STATE OF MARYLAND,
Prince George's County, set:

I hereby certify that the aforegoing bill of sale is truly taken and copied from liber C. L. M., No. 1, folio 521, &c., one of the land record-books of said county.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit for Prince George's County, this 13th day of
83 January, anno Domini one thousand eight hundred and sixty.
[SEAL.] C. S. MIDDLETON,
Clerk of the Circuit Court for Prince George's County.

The State of Maryland to the sheriff of Prince George's County, greeting:

You are hereby commanded to summons Charles S. Middleton, clerk of the circuit court for Prince George's County, and Henry Brooks, his deputy clerk, that all excuses and delays being laid aside, they be and appear before the justices of the orphans' court, at a session of the said orphans' court of Prince George's County, to be held at Upper Marlborough, on the 17th day of January, 1860; and that they then and there bring with them, and produce at the time and place aforesaid, a deed of gift bearing date on the 12th day of November, 1856, executed by one George T. Craufurd, to a certain Elizabeth Taylor, and also they bring with them a certain other deed of gift or bill of sale from Daniel R. Wall to a certain Elizabeth Taylor, bearing date on the 20th March, 1857, and then and there to testify and show all and singular those things which they know of the said deeds of gifts and bills of sales, a conveyance do impart of one concerning a certain matter of controversy in the said orphans' court depending, between Richard L. Black-
84 burn and George T. Craufurd, and as touching the right of administration upon the personal estate of Daniel Craufurd, of Prince George's County, deceased, now pending between the said Richard L. Blackburn and the said George T. Craufurd, on the part of the said Richard L. Blackburn. Hereof fail not at your peril, and have you then and there this writ.

{ ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY. [SEAL.] } { Witness William B. Hill, esquire, chief judge of the orphans' court for Prince George's County, this 17th day of January, 1860. Issued 17th day of January, 1860. }

Test:

WILLIAM A. JARBOE,
Reg. of Wills for P. G. County.

The aforegoing summons returned endorsed thereon:
"Summon'd Brooke; not sum'd Middleton.
"D. R. DYER, *Sheriff.*"

W'M A. JARBOE,
Reg. of Wills for P. G. County.

The S'ate of Maryland to the sheriff of Prince George's County, greeting:

Your are hereby commanded to summon Charles S. Middleton, clerk of the circuit court for Prince George's County, and Benjamin H. Mulliken, his deputy clerk, that all excuses and delays being laid

85 aside, they be and appear before the justices of the orphans' court of Prince George's County, to be held at the town of Upper Marlborough, on the 24th day of January, 1860, and that they then and there bring with them, and produce at the time and place aforesaid, a deed of gift bearing date on the 12th day of November, 1856, executed by one George T. Craufurd to a certain Elizabeth Taylor, and also they bring with them a certain other deed of gift, or bill of sale, from Daniel R. Wall to a certain Elizabeth Taylor, bearing date 20th March, 1857, and then and there to testify and show all and singular those things which they know of the said deeds of gift and bills of sale, a conveyance do impart of one concerning a matter of controversy in the said orphans' court, pending between Richard S. Blackburn and George T. Craufurd, and as touching the right of administration upon the personal estate of the said David Craufurd, of Prince George's County, deceased, now pending between the said Richard S. Blackburn and the said George T. Craufurd, on the part of the said Richard S. Blackburn. Hereof fail not at your peril, and have you then and there this writ.

{ ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. } Witness W'm B. Hill, esqu're, chief judge of the orphans' court for Prince George's County, this 17th day of January, 1860.

Test:

W'M A. JARBOE,

86 *Register of Wills for Prince George's County.*

The aforegoing summons returned endorsed thereon:
Cöpé.

D. R. DYER, *Sheriff.*

STATE OF MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's County, greeting:

{ ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. } You are hereby commanded to summons James W. Lowe, so that, all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on Tuesday, 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy in said court, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, this 17th day of January, 1860.

Test:

W'M A. JARBOE,
Register of Wills for Prince George's County.

The aforegoing summons returned endorsed thereon:
"Summoned.

"D. R. DYER, *Sheriff.*"

87 Test:

WM. A. JARBOE, *Reg.*

STATE OF MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's County, greeting:

ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND.

You are hereby commanded to summon Dr. John H. Boyle, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on Tuesday, 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, the 17th day of January, 1860.

Issued the 17th January, 1860.

Test:

W'M A. JARBOE, *Reg.*

The aforegoing summons returned, endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test:

W'M A. JARBOE, *Reg.*

88 MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's County, greeting:

ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND.

You are hereby commanded to summon Henry J. Ball, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, on the matter of controversy between Richard S. Blackburn and George F. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief justice of the orphans' court for Prince George's County, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test:

W'M A. JARBOE, *Reg.*

The aforegoing summons returned, endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test:

W'M A. JARBOE, *Reg.*

MARYLAND, *set:*

89 The State of Maryland to the sheriff of Prince George's County, greeting:

{ ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. } You are hereby commanded to summon William Duvall, so that all delays be set aside, to be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before the said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, chief judge of the orphans' court of Prince George's County, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test:

W'M A. JARBOE, *Reg.*

The aforegoing summons returned, endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test:

W'M A. JARBOE, *Reg.*

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, greeting:

90 { ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. } You are hereby commanded to summon Thomas Talbert, so that all delays be set aside, to be and appear before the judges of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before the said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, and now pending in said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, the 17th day of January, 1860.

Issued 17th day of January, 1860.

Test:

WILLIAM A. JARBOE, *Reg.*

The aforegoing sumons returned, endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test:

WILLIAM A. JARBOE, *Reg.*

MARYLAND, *set:*

State of Maryland to the sheriff of Prince George's County, greeting:

91 { ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. } You are hereby commanded to summon J. J. Jarboe, so that all delays be set aside, he be and and appear before the judges of the orphans' court of Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before the said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, this 17th day of January, 1860.

Issued 17 January, 1860.

Test:

W'M A. JARBOE, *Reg.*

The above summons returned, endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test:

W'M A. JARBOE, *Reg.*

State of Maryland to the sheriff of Prince George's County, greeting:

{ ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. } You are hereby commanded to summon Richard Hopkins, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough

92 Town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, the 17 day of January, 1860.

Issued 17 January, 1860.

Test:

W'M A. JARBOE, *Reg.*

The above summons returned, endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test:

W'M A. JARBOE, *Reg.*

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, greeting:

{ ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. } You are hereby commanded to summon J. J. Jarboe, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince

George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for George T. Crau-
93 furd, before said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, this 17th day of January, 1860.

Issued 17th day of January, 1860.

Test:

W'M A. JARBOE, *Reg.*

The above summons returned, endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test:

W'M A. JARBOE, *Reg.*

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, greeting:

{ ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. } You are hereby commanded to summon Harriet Ferguson, so that all delays be set aside, she be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before the said court, in the matter of controversy between George T. Craufurd and the said Richard S. Blackburn, touching
94 the right of administration on the estate of David Craufurd, late of said county, deceased, now pending before this court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief justice of the orphans' court for Prince George's County, the 17th day of January, 1860.

Issued January 17th, 1860.

Test:

W'M A. JARBOE, *Reg.*

The above summons returned, endorsed thereon:

"Summon'd.

"D. R. DYER, *Sheriff.*"

Test:

W'M A. JARBOE, *Reg.*

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, greeting:

{ ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. } You are hereby commanded to summon James W. Lowe, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in the said county, on the 24th day of January, 1860, to testify for George T. Craufurd before said court, in the matter of controversy between George

T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said
95 county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, this 17th day of January, 1860.

Issued 17th day of January, 1860.

Test:

W'M A. JARBOE, *Reg.*

The above summons returned, endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test:

W'M A. JARBOE, *Reg.*

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, greeting:

ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND.

You are hereby commanded to summon James L. Brashears, so that all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said
96 county, deceased, now pending before said court. Hereof fail not, at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, this 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test:

W'M A. JARBOE, *Reg.*

The above summons returned, endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test:

W'M A .JARBOE, *Reg.*

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, greeting:

ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND.

You are hereby commanded to summon William H. Wilson, so that all delays be set aside, to be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify before said court for George T. Craufurd in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said
97 county, deceased. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esq'ure, chief judge of the orphans' court for Prince George's County, the 17th day of January, 1860.
Issued the 17th day of January, 1860.
Test:

W'M A. JARBOE, *Reg.*

The above summons returned, endorsed thereon:
"Summoned.

"D. R. DYER, *Sheriff.*"

Test:

W'M A. JARBOE, *Reg.*

In the orphans' court of Prince George's County.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

Cross-petition and answers heretofore filed.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

Supplemental petition of George T. Craufurd praying for issues to be sent to the circuit court for Prince George's County, filed in the said orphans' court on the 24th day of January, 1860.

To the honorable the judges of the orphans' court for Prince George's County:

98 The supplemental petition of George T. Craufurd respectfully showeth that he is entitled, and hereby requires that issues be framed by your honorable court touching the matter in controversy between your aforesaid petitioner and the said Richard S. Blackburn; and he submits to your honorable court that the following issues be adopted by your honorable court, and transmitted to the circuit court for Prince George's County for trial, according to the act of assembly in such case made and provided, viz:

First. Whether your petitioner, George T. Craufurd is one of the next of kin to the said David Craufurd on the part of the father of the said David Craufurd.

Second. Whether there is any male issue other than your petitioner, George T. Craufurd, of the next of kin to the said David Craufurd, on the part of the father of the said David Craufurd. And your petitioner will ever pray, &c.

SAM'L H. BERRY,
D. C. DEGGES,
EDWARD W. BELT,
W'M J. HILL,
Attorneys for Petitioner.

In the orphans' court for Prince George's County. January 24, 1860.

99 Upon the hearing of the supplemental petition aforegoing of George T. Craufurd, requiring issues to be framed touching the

matter in controversy between said George T. Craufurd and the said Richard S. Blackburn, it is ordered by the orphans' court of Prince George's County, this 24th day of January, 1860, that the aforegoing two issues asked for by the petitioner, in his aforesaid supplemental petition, and the additional issues offered by the said Richard S. Blackburn as the third issue, to wit: Third. Whether the said Thomas B. Craufurd was ever lawfully married to the said Elizabeth Taylor, either before or after the birth of the said George T. Craufurd, be transmitted to the circuit court for Prince George's County for trial, according to the act of assembly in such case made and provided.

WILLIAM B. HILL,
BASIL F. DUCKETT,
WM B. BARKER,
Judges of the Orphans' Court for Prince George's County, Md.

Which is accordingly done.

And now here, on the 19th day of March, in the year 1861, the
100 clerk of the court of appeals filed in the office of the register of wills of Prince George's County a certain transcript of the proceedings of the said court had upon the matter of said issues, which transcript is as follows:

Court of appeals of M'd. December term, 1860.

GEORGE T. CRAUFURD
vs
RICHARD S. BLACKBURN.

Justice Bartol delivered the opinion of the court:

Doctor David Craufurd, late of Prince George's County, died about the fifth day of December, 1859, intestate and unmarried, leaving neither widow, nor child, nor any descendants, father, mother, brother, or *father*. The appellant applied to the orphans' court for letters of administration on his estate, claiming to be the legitimate son of Thomas B. Craufurd, deceased, who was a brother of Doctor David Craufurd.

This application was resisted by the appellee, upon the ground that Thomas B. Craufurd never was lawfully married to the mother of the appellant, and that the appellee, being first cousin to the decedent, is next of kin, and entitled to letters of administration on his estate. At the instance of the parties, these issues were framed by the orphans' court, and sent to the circuit court of that county for trial, and the
101 cause was afterwards removed to the circuit court for Charles County. The issues were as follows;

1st. Whether your petitioner, George T. Craufurd is one of the next of kin to the said David Craufurd, on the part of the father of said David Craufurd.

2. Whether there is any male other than your petitioner, George T. Craufurd, of the next of kin to the said David Craufurd.

3. Whether the said Thomas B. Craufurd was ever lawfully married to the said Elizabeth Taylor before or after the birth of the said George T. Craufurd.

The verdict of the jury upon all the issues was against the appellant, who reserved two exceptions at the trial, which are presented for our decision on this appeal.

A great deal of testimony was produced, which it is unnecessary for us to notice. It was properly submitted to the jury, and passed upon by them.

The maiden name of the mother of the appellant was Elizabeth or Betsey Taylor. To prove that she was lawfully married to Thomas B. Craufurd, the appellant offered, with other evidence the declarations of Thomas B. Craufurd, made on several occasions, to the effect that she was his wife, and also called his mother to the stand, who testi-
102 fied that she and Thomas B. Craufurd were married by a Catholic priest, in the city of Washington, in 1835. To rebut this evidence, the appellee offered the declarations of Thomas B. Craufurd, made in the year 1837 and afterwards, that he was not married to Betsey Taylor; to which the appellant objected. But the circuit court decided the evidence to be admissible, and the propriety of this ruling forms the subject of first exception.

By the ordinary rule of evidence, the declarations of persons not parties to the cause are excluded, on the ground that they are mere hearsay; but it is a well-recognized exception to this rule that, in matters of pedigree, the declarations of deceased members of the family are admitted. Cope's adm's vs. Prince, 7 Gill, 247; 4 G. & J., 416.

The term pedigree embraces not only descent and relationship, but also the facts of birth, marriage, and death, and the time when these events happen. 7 Gill, 264.

This exception to the general rule had its origin in the necessity of the case. "From the necessity of the thing," says Lord Mansfield, 4 Camp., 415, "the hearsay of the family as to the marriage, birth, and the like, are admitted." This language is cited 7 Gill, 264.

But it is objected that, although such declarations to prove pedi-
103 gree are ordinarily admissible, yet they ought to have been excluded in this case, because the necessity did not exist, there being a party to the alleged marriage living, and competent to testify, and because it was inadmissible upon the principle that the best evdence of which the nature of the thing is capable, must be given. This objection arises from a misapprehension of rule. Such declarations are not held to be admissible or inadmissible, according to the necessityof the particular case, but they are admitted as primary evidence on such subjects by the established rule of law, which, though said to have its origin in necessity, is universal in its application. Nor do such declarations stand upon the footing of secondary evidence, to be excluded where a witness can be had who speaks upon the subject from his own knowledge. "Hearsay evidence is, of course, inadmissible if the person making the declarations is alive and can be called; but the declaration of a deceased mother as to the time of the birth of her son *are* admissible, though the father is living and not called." Hubback, on the evidence of Succession, 668, (48 Law Lib.)

In this case the testimony of the appellant's mother was properly admitted. Its weight was exclusively a question for the jury;
104 but it cannot be said, as matter of law, to have conclusively established the marriage, so as to exclude other contradictory and rebutting evidence, which was legally competent and admissible, for the purpose of disproving her statement. In Hubback, 243, (47 Law Lib.,) it is: "The proof of marriage by the register or by the testimony of witnesses, is not, *is not* in questions of legitimacy, considered the only best evidence within the rule which requires such evidence to be produced, or its production accounted for. Notwithstanding the

existence of this evidence, marriage may be proved by reputation and declarations, and presumed from circumstances."

The language will be found to be sustained by the authorities, which warrant us in saying that the same principle applies where the declarations are adduced for the purpose of disproving the alleged marriage.

It has been contended, upon the part of the appellant, that this evidence ought not to have been admitted, because it tended to bastardize the issue; and neither the personal testimony of the parents nor their declarations are admissible for that purpose.

In Goodright vs. Moss., 2 Camp., 594, Lord Mansfield said: It is a rule founded in decency, morality, and policy, that they (the father
105 and mother) shall not be permitted to say, after marriage, that they have had no connexion, and therefore, that the offspring is spurious. In that case, the question was as to the time of the birth of the child and the declarations of the deceased parent were admitted to prove that he was born before marriage. The rule just cited was there held to be inapplicable. We consider it alike inapplicable to the case before us.

The distinction which we deduce from all the authorities is this: If marriage be proved or admitted, declarations of the parents will not be admitted to defeat the consequences of marriage, as that the children are bastards; but when the question is marriage vel non, "the declarations of the parties themselves, if deceased, that they were or were not married, provided they were made ante litem motam, are admissible evidence of the fact declared." See Hubback, 244, and authorities there cited. 1 Phil. Evidence, 251, note 1, ed. of 1859.

One other rule has been invoked by the appellant in support of this objection to this evidence. It is said that, in order to make Thomas B. Craufurd's declarations evidence, it must first be proved aliunde that he was a deceased relation of the appellant, which is not shown by proving that he is the putative father only. And in support of this, the counsel cited Hubback, 657, where it is said: "The rule is
106 now well established that hearsay evidence on matters of pedigree, to be admissible, must proceed from some member of the family to which it relates; and the declarations of an illegitimate member of the family have been held inadmissible." But the same author, on page 660, says: "It is sufficient that the declarant be connected by extrinsic evidence with one branch of the family touching which the declaration is tendered. To require proof of his connection with both branches would be to render the declaration itself superfl'ous, as the very fact in proof of which it is used would then be established." See Monkton vs. Att'y General, 2 Russ & Mylew, 147. (6 Eng. com. Ch. R. 436.) According to the rule laid down by Lord Brougham in the case last cited, it is sufficient, in order to admit the declarations of Thomas B. Craufurd, to prove his relationship with the decedent, David Craufurd, the question here being whether the applicant is next of kin to David Craufurd. But without relying on this point, upon the authority of the case of Monkton vs. the Attorney General, which was wholly unlike the present, we are of opinion that the objection of the appellant now under consideration will not bear the test of examination. The appellant, after offering evidence that he was the reputed son of Thomas B. Craufurd,
107 to prove his legitimacy, offers the declarations of Thomas B. Craufurd to establish his marriage with Elizabeth Taylor, the mother of the appellant. The appellee, to rebut this, offers the declarations of Thomas B. Craufurd to the effect that he never was married to Elizabeth Taylor, and that the appellant, though his son, is not legitimate. Then

the objection is made that these last declarations are inadmissible, unless the foundation is first laid by proving that the appellant is legitimate, for without that it is said the declarant is not legally related to the appellant. Such a proposition involves a contradiction in itself, and needs no argument or authority to refute it. As we have said before, all the authorities establish that where the question is *marriage* vel non, the declarations of the parties to the alleged marriage of deceased are admissible, either to prove or disprove it.

It follows that, in our opinion, the ruling of the circuit court on the first exception ought to be affirmed; and for the same reasons we affirm on the second exception, which presents substantially the same question. The last will and testament of Thomas B. Craufurd was properly admitted in evidence as a declaration made by him in a most deliberate and solemn form. Judgment affirmed.

True copy. Teste:

W'M A. SPENCER,
Clerk Court of Appeals, Md.

108

MARYLAND, *sct:*

At a court of appeals of the State of Maryland, begun and held for the said State, at the city of Annapolis, on the first Monday in December, being the third day of December in the year of our Lord one thousand eight hundred and sixty, and in the year of the independence of the United States the eighty-fifth—

Present, the Hon. John C. LeGrand, chief justice; W'm H. Tuck, Ja's L. Bartol, associate justices; W'm A. Spencer, clerk—

In the record of proceedings of the same court, among others, were the following, to wit:

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

Be it remembered that now here, on the first Monday in December, being the third day of said month, in the year of our Lord one thousand eight hundred and sixty, the judge of the first judicial circuit of Maryland, in pursuance of the directions of the acts of assembly in such case made and provided, transmit to the court of appeals here the record of
109 proceedings of a plea which was lately depending before him in the circuit court of Charles County, between George T. Craufurd, plaintiff, and Richard S. Blackburn, defendant, and wherein the said circuit court gave judgment for said Richard S. Blackburn, against the said George T. Craufurd, and from which said judgment the said George T. Craufurd appeals to the court of appeals here, the tenor of which said record of proceedings is in form following, to wit:

CHARLES COUNTY, *to wit:*

At a circuit court of the first judicial *court* of the State Maryland, begun and held at Port Tobacco, in and for Charles County aforesaid, on the first Monday of May, being the seventh day of the said month, in the year of our Lord one thousand eight hundred and sixty, and the eighty-fourth year of the independence of the United States of America—

Were present, the Honorable Peter W. Crain, judge; Peter Wheeler, esq., sheriff; G. W. Crain, clerk—

In the record of proceedings of the same court, among other, is the following, to wit:

GEORGE T. CRAUFURD
vs.
110 RICHARD S. BLACKBURN.

Be it remembered that, heretofore, to wit, on the thirtieth day of April, in the year of our Lord one thousand eight hundred and sixty, the clerk of the circuit court for Prince George's County, in pursuance of the act of assembly in such case made and provided, transmitted to the clerk of the circuit court here for trial a transcript of the record and proceedings in the above case, wherein issues had been respectively framed by both parties, the tenor whereof is in the words following, to wit:

STATE OF MARYLAND,
Prince George's County, set:

At a circuit court for the first judicial circuit of Maryland, begun and held at the town of Upper Marlborough, in and for Prince George's County aforesaid, on the first Monday in November, being the second day of the same month, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-fourth year of the independence of the United States of America—

Were present, the Honorable Peter W. Crain, judge; Daniel R. Dyer, esq., sheriff; Charles S. Middleton, clerk—

111 In the record and proceedings of the same court, among others, are the following, to wit:

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

Be it remembered that, heretofore, to wit, on the fifteenth day of March, in the year of our Lord, one thousand eight hundred and sixty, the orphans' court for Prince George's County, in pursuance of the act of assembly in such case made and provided, transmitted to the circuit court here for trial, a transcript of record and proceedings then in said court depending of the above case, wherein issues had been respectively framed by both parties, the tenor whereof is in the words following, to wit:

MARYLAND,
Prince George's County, set:

At an orphans' court held at Upper Marlborough Town in and for Prince George's County, on the 24th day of January, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-third year of the independence of the United States of America—

Were present, William B. Hill, C. J.; Basil T. Duckett, A. J.;
112 William R. Barker, A. J.; John W. Webster, sheriff; William A. Jarboe, register—

There was, among the proceedings of the same court, the following, to wit:

In the orphans' court for Prince George's County.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

Cross petition and answer filed.

In the matter of the oral application of Richard S. Blackburn for grant of letters of administration upon the personal estate of David Craufurd, late of Prince George's County, deceased.

In the orphans' court for Prince George's County, at a special court called for the 12th January, 1860, George T. Craufurd, of the full age of twenty-one years, resident of Prince George's County, a nephew of the whole blood and next of kin of said David Craufurd, entitled under the laws of the land to letters of administration on the personal estate of the said David Craufurd, objects to the grant of letters of ad-
113 ministration to the said Richard S. Blackburn, because your objectant is prepared to show by undeniable and competant proof, that your objectant is the party legally entitled to the grant of letters of administration on the personal estate of said David Craufurd, and suggests to your honors that a day may be fixed by the court for the hearing of the said application and the taking of such testimony as either side may desire, and that plenary proceedings may be directed in the usual form.

D. C. DEGGES,
L. H. BERRY,
EDW'D W. BELT,
W. J. HILL,
For Objectors.

Ordered, by the orphans' court for Prince George's County, this 12th day of January, 1860, upon the within oral application and the objection thereto, that the said Richard S. Blackburn and George T. Crauford respectfully file their petitions in writing for grant of letters in this case, and that they severally answer the said petitions upon oath or affirmation, as the case may be, and that plenary proceedings be had upon said petitions and answer.

W'M D. HILL.
114 W'M B. BARKER,
BAZIL F. DUCKETT,
Judges of the Orphans' Court for Prince George's County.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

In the orphans' court for Prince George's County, January 17th, 1860,

the petition of Richard S. Blackburn for grant of letters of administration on the personal estate of David Craufurd, filed January 12th, 1860. George T. Craufurd's petition for letters of administration on the personal estate of David Craufurd, filed January 13th, 1860.

Continued to January 24th, 1860.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

115 In the orphan's court for Prince George's County, January 24th, 1860, the petition of Richard S. Blackburn, for grant of letters of administration of the personal estate of David Craufurd, filed January 12th, 1860. The petition of George T. Craufurd for grant of letters of the personal estate of David Craufurd, filed January 13th, 1860. R. S. Blackburn's answer to George T. Craufurd, together with Exhibit' A, B, & C, filed January 17th, 1860.

George T. Craufurd's answer to petition of R. S. Blackburn, filed January 17, 1860.

To the honorable the justices of the orphans' court of Prince George's County, Maryland:

The petition of Richard S. Blackburn, respectfully shows that, on or about the fifth day of December, eighteen hundred and fifty-nine, a certain Doctor David Craufurd, of this county and State, departed this life intestate, leaving a very large real and personal property; that the said David Craufurd was never married and left neither widow, or a child, or children, or grandchild, or father, or brother, or sister, or mother, so that his next of kin of inheritable blood are entitled to the said estate and to administration thereon, according to the rules of law and

116 the practice of this court. Your petitioner further shows that a certain Nathaniel Craufurd, the father of the said David Craufurd, intermarried with one Sarah Blackburn, the sister of your petitioner's father, and had as the issues of that marriage, the said David Craufurd, Nathaniel Craufurd, j'r, Bushrod Craufurd, Thomas B. Craufurd, and Marian Craufurd, all of whom are dead, and died without ever having been married, or leaving any issues of inheritable blood. Your petitioner and certain other persons, male and female, living in the State of Virginia and District of Columbia, stand in the relation of first cousin to the said David Craufurd, deceased, and as such are entitled, as the next of kin of inheritable blood, to the said estate, both real and personal, left by him, and your petitioner avers that he is the eldest male heir and distributee of said estate, and is therefore entitled to letters of administration thereon. He prays accordingly and most respectfully, that your honors may direct letters of administration on the personal estate of said David Craufurd, deceased, to be granted unto him. And, in duty bound, he will ever pray, &c.

R. S. BLACKBURN.

The answer of George T. Craufurd to the petition of Richard S.
117 Blackburn, exhibited in said orphan's court against your respondent.

To the honorable the judges of the orphan's court of Prince George's County:

This respondent, answering under oath, admitted that Dr. David Craufurd, named and referred to in the petition of the said Richard S. Blackburn, departed this life at the time therein stated, intestate and without issue, and never was married; that he left neither widow, or a child, or children, or grandchildren, or father, or brother, or sister, or mother. This respondent admits that the next of kin of the said David Craufurd are entitled to the estate left by him, which is very large and valuable, and consists both of real and personal*ity*. Your respondent admits that Nathaniel Craufurd, the father of the said David Craufurd, intermarried with one Sarah Blackburn, who was sister of the father of the petitioner, Richard S. Blackburn, and that the issue of that marriage is properly named and described in said petition; that all of said issues are dead; that Thomas B. Craufurd, one of the children or issue of the said Nathaniel Craufurd and the above-named Sarah Craufurd, his wife, departed this life in the year 1848, having previously intermarried with Elizabeth Taylor, and had, as the issue of that
118 marriage, your petitioner and his three sisters. Your respondent admits that all the children of the said Nathaniel Craufurd are dead, but denies that all of them died without ever having been married, or leaving any issue of inheritable blood, but evers and insists, and is prepared to prove upon the trial of the proper issues to be sent down to the circuit court for Prince George's County from this honorable court that the said Thomas *C.* Craufurd, a child of said Nathanial Craufurd, and a brother of the full blood of the said David Craufurd, deceased, intermarried with Elizabeth Taylor, and that your respondent and his three sisters are the issue of said intermarriage, the next of kin to the said David Craufurd, deceased, and as such are entitled under the law of the land to the said estate. Your respondent denies that the said Richard S. Blackburn is the next of kin to the said David Craufurd, and therefore he is not entitled to any portion of the said estate and to letters of administration on the said personal estate, but insists that he, your respondent, is the oldest male heir and next of kin of the said David Craufurd, and as such is clearly entitled to letters of administration on the personal estate of the said David Craufurd, &c., &c.

GEORGE T. CRAUFURD.

119 PRINCE GEORGE'S COUNTY, *to wit:*

On this 17th day of January, 1860, before the subscriber, a justice of the peace of the said county, personally appeared George T. Craufurd, and made oath on the Holy Evangely of Almighty God that the facts contained in the foregoing answer are true as stated, to the best of his knowledge and belief.

Sworn before—

C. R. BENSON, *J. P.*

To the honorable the judges of the orphan's court of Prince George's County:

The petition of George T. Craufurd, of said county, respectfully repre-

sents unto your honors that David Craufurd, late of said county, deceased, departed this life on the fifth day of December, one thousand eight hundred and fifty-nine, leaving a very large real and personal estate; that the said David Craufurd never was married, and left neither widow, or child, or children, or grandchild, or father, or brother, or sister, or mother, so that his next of kin of inheritable blood are entitled to said estate, and to the administration thereon, according to the rule of law and practice of this court.

Your petitioner further shows that a certain Thomas B. Craufurd, brother of the said David Craufurd, departed this life some time
120 in the year one thousand eight hundred and forty-eight, all their other brothers and sisters having previously thereto died intestate, and without issue, and never having married.

But the said Thomas B. Craufurd intermarried with one Elizabeth Taylor, and had as the issue of that intermarriage the following children, to wit: Mary E. Craufurd, now the wife of John H. Sansbury; Sarah J. Craufurd, now the wife of Daniel R. Wall; your petitioner George T. Craufurd, and Anna Victoria Craufurd, now the wife of Philip Hill, j'r; all of whom are residents of said county; that your petitioner and his said sisters are the nephew and nieces of the said David Craufurd, deceased, and as such are entitled, as his next of kin, to the said estate, both real and personal, left by the said David Craufurd, deceased; and your petitioner avers that he is the eldest male heir and distributee of said estate, and is therefore entitled to letters of administration thereon.

Your petitioner therefore most respectfully prays your honors may direct letters of administration on the personal estate of said David Craufurd, deceased, to be granted unto him; and, as in duty bound, he will ever pray, &c., &c.

D. C. DEGGES,
L. H. BERRY,
EDW. W. BELT,
121 W'M J. HILL,
For Petitioners.

In the orphans' court of Prince George's County

Cross-petition for letters of administration on the personal estate of David Craufurd, deceased.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

The answer of Richard S. Blackburn to the petition of George T. Craufurd for letters of administration on the personal estate of David Craufurd, deceased, heretofore filed in this court.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

To the honorable the justices of the orphans' court of Prince George's County, Maryland:

The respondent, who is next of kin of the said David Craufurd, and the eldest male heir of inheritable blood to his said estate, both real

and personal, by way of answer to the petition of the said George T. Craufurd, respectfully states that he admits that the said David
122 Craufurd departed this life on or about the fifth day of December last, leaving a very large real and personal estate. He also admits that the said David Craufurd was never married, and died without issue, leaving neither a widow, or child, or children, or grandchild, or father, or brother, or sister, or mother, so that his next of kin of inheritable blood are entitled to his estate, and the administration thereon, according to the principles and rules of law in such cases.

This respondent, further answering, says that a certain Nathaniel Craufurd, the father of said David Craufurd, intermarried with one Sarah Blackburn, the aunt of this respondent, and a sister of this respondent's father; that they have both long since departed this life, leaving as the issue and fruits of said marriage the said Dr. David Craufurd, Nathaniel Craufurd, j'r, Bushrod Craufurd, Thomas B. Craufurd, and Marian Craufurd; that the said Nathaniel Craufurd, j'r, Bushrod Craufurd, Thomas B. Craufurd, and Marian Craufurd never married, and each and all of them died without leaving any lawful children or inheritable issue, so that the only persons now in existence who are next of kin, and lawful heirs of the said David, are your respondents, a first cousin, and eight or ten other persons, who are also first cousins, living now in the
123 State of Virginia and District of Columbia, and elsewhere, all of whom, as the said next of kin, are entitled to the said estate, both real and personal; and your respondent, who is the eldest male heir, is entitled to letters of administration on the said personal estate; all of which said averments this respondent is ready to prove whenever required.

Further answering, this respondent admits that the said Thomas B. Craufurd, the brother of the said David Craufurd, and the reputed father of the said George T. Craufurd, Mary E. Sansbury, Sarah Wall, and Anna S. Hill, mentioned in said petition, departed this life some time in the month of March, in the year eighteen hundred and forty-eight, but he utterly and positively denies that the said Thomas B. Craufurd, in his lifetime, ever intermarried with the said Elizabeth Taylor, the mother of the said petitioner, and her named children; but, on the contrary, this respondent avers that the said petitioner, George T. Craufurd and the other mentioned children are illegitimate, and the natural children of the said Elizabeth Taylor, born out of lawful wedlock with the said Thomas B. Craufurd, or any other person; and as such illegitimate
124 and natural children, have no inheritable blood of the said Thomas B. or David Craufurd, deceased, and are not entitled to any portion of the said David Craufurd's estate, or to administration thereof.

In confirmation of these facts this respondent states that, on the 22nd day of July, in the year 1844, the said Thomas B. Craufurd executed his last will and testament, which was duly admitted to probate in the orphans' court of Prince George's County, on the 4th day of April, 1848, shortly after the death of the said Thomas B. Craufurd, in which he devises and bequeaths all his real and personal estate to his aforesaid children, describing them as natural children by the said Elizabeth Taylor; all of which will more fully appear by reference to the last will and testament, a correct and true copy of which is herewith filed, marked Exhibit A, and which this respondent prays may be taken and considered as a part of his answer.

Further answering, this respondent says: That, by the said will and testament of the said Thomas B. Craufurd, a certain Thomas T. Bowie,

of said county, was made and appointed executor and guardian
125 to the aforesaid natural children of him, the said Thomas B. Craufurd; that, on the 15th of April, 1848, letters testamentary were granted by the orphans' court of said county to the said Thomas T. Bowie; that, on the 17th June, in the year 1856, the said Bowie passed his final account as executor, and on the 5th January, 1857, a full and final distribution of the said estate was made, as directed by said will, among the natural children of Thomas B. Craufurd, as may be seen by reference to the proceedings of the orphans' court aforesaid; and that during all this time they have held their respective portions of said estate in the character and under the description contained in said will, and no pretense set up during all that time, either by the said Elizabeth Taylor or any one of said children, that she was ever lawfully married to the said Thomas B. Craufurd; and this respondent avers that no such pretended marriage was ever set up or mentioned until after the death of said Dr. David Craufurd, and in confirmation of this your respondent refers to the following exhibits, marked B & C, herewith filed, being true copies of sundry deeds now on record among the land records of Prince George's County by and between the said Elizabeth Taylor and her children and others, in which said deeds
126 the said Elizabeth Taylor is described as the natural mother and the children as the natural children of said Thomas B. Craufurd; all of which said exhibit this respondent prays may be taken and considered as a part of this answer.

This respondent insists that, after so long and repeated acquiescence by the said Elizabeth Taylor and the said George T. Craufurd in the true character of said George's paternity, and in her true relation to the said Thomas B. Craufurd, in his lifetime, it is now too late for either of them to question the illegitimacy of the said children of Elizabeth Taylor; and this respondent is advised that, by their said conduct, acts, and declarations, they are now estopped from setting up any such pretended marriage as the one set forth in the petition of the said George T. Craufurd.

This respondent, having fully answered the said petition, prays that the same may be dismissed, and that letters of administration on the personal estate of David Craufurd, deceased, may be granted unto him as the eldest male heir, being next of kin. And, as in duty bound, he will ever pray, &c.

RICHARD S. BLACKBURN.

STATE OF MARYLAND,
Prince George's County, sct:

127 Be it remembered that, on this 17th day of January, 1860, personally appeared before me the subscriber, one of the State's justices of the peace in and for said county, Dr. Richard S. *Baldwin*, the respondent in the foregoing answer, and made oath on the Holy Evangely of Almighty God that the matters and things set forth and contained in the foregoing answer are true, to the best of his knowledge and belief.

Sworn before me—

C. R. BENSON, *J. P.*

EXHIBIT A.

In the name of God, amen. I, Thomas B. Craufurd, of Prince George's County, in the State of Maryland, being apprehensive of death, but of

sound and disposing mind, memory, and understanding, and being anxious, before I die, to settle and dispose of all my estate by last will and testament, do hereby make and publish this as my last will and testament.

In the first place, I desire all my just debts and funeral expenses to be paid by my executor hereinafter named, and after their payments I will and devise as follows:

I will, devise, and give unto George Thomas Craufurd, my natural son by Elizabeth Taylor, now about 8 years old, the one-half of my entire landed estate, to be laid off to him so as to include the
128 dwelling-house, all the out-houses attached thereto, at Greenwood, wherein I now reside, to him, the said George T. Craufurd, his heirs and assigns, in fee-simple for ever.

Also I will, devise, and give the other moiety or half of all my landed estate to Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my natural children and daughters by the said Elizabeth Taylor, to be equally divided between them, share and share alike, to them, their heirs and assigns, forever, as tenants in common. I give and bequeath unto the said George Thomas Craufurd, my aforesaid son, the one-half of all my negroes, and other personal estate of every description whatever, including debts due to me, and every other description of personal property whatever, to him, the said George Thomas Craufurd, his executors, administrators, and assigns. The other half of my negroes and personal estate of every description, as aforesaid, whatever, I give and bequeath unto the aforesaid Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my aforesaid natural children and daughters by the said Elizabeth Taylor, to be equally divided among them, share and share alike.

And whereas, in all probability, the said Elizabeth Taylor may be now pregnant and with child by me, I further will and devise that in
129 case such child shall be born after my death, that then, and in that event, said child shall have an equal share with my aforesaid daughters in all that half of my real and personal estate which I have hereinbefore devised and bequeathed to them.

I further will and devise, and do hereby direct, that Elizabeth Taylor, the mother of the aforesaid children, shall live and have her home at Greenwood, with the aforesaid children, so long as she shall live single and unmarried.

And lastly, I do hereby constitute and appoint my friend Thomas T. Bowie, to be sole executer of this my last will and testament, and guardian to my aforesaid children, for and until they shall respectively arrive at full age.

In testimony whereof I have hereunto set my sign and mark—not being able to write my name, in consequence of a *paryletic* attack in my right arm, by which I have lost the use of it—and affix my seal this twenty-second day of July, in the year of our Lord one thousand eight hundred and forty-four.

THO'S his + mark. B. CRAUFURD. [SEAL.]

Signed, sealed, published, and declared by Thomas B. Craufurd, as his last will and testament, in our presence; and, at his request, in his presence, and the presence of each other, we have subscribed our names *at* witnesses thereto.

130 BENJ. L. *Gault.*
W. BOWIE BROOKE.
G. B. STONE.

APRIL 4TH, 1848.

PRINCE GEORGE'S COUNTY, *set:*

Then came Benja. L. *Gault* and George B. Stone, two of the subscribing witnesses to the within will of Thomas B. Craufurd, late of Prince George's County, deceased, and made oath on the Holy Evangely of Almighty God, that they did see the testator herein named sign and seal this will, and heard him publish, pronounce and declare the same to be his last will and testament; that at the time of his so doing he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding; and that they, together with W. Bowie Brooke, the other subscribing witness, respectfully subscribed their names as witnesses to this will, in the presence of the testator, at his request, and in presence of each other.

JAMES HARPER,
Reg'r of Wills of P. G. County.

PRINCE GEORGE'S COUNTY, *set:*

I, William A. Jarboe, register of wills for the county aforesaid, in the State of Maryland, do hereby certify that the aforegoing is a true
131 copy of the last will and testament of Thomas B. Craufurd, late of said county, deceased, duly proven according to law, and now upon record remaining in my office.

In testimony whereof I hereunto set my hand and affix the seal of the orphans' court for Prince George's County this 12th day of January, A. D. 1860.

ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY MARYLAND. [SEAL.]

WILLIAM A. JARBOE,
Reg'r of Wills for P. G. County.

EXHIBIT B.

Know all men by these presents that I, George T. Craufurd, of Prince George's County, and State of Maryland, for and in consideration of the natural love and affection which I have towards my mother, Elizabeth Taylor, and for the purpose of securing her better maintenance and support, have given, granted, transferred, assigned, and conveyed, and do by these presents give, grant, assign, and convey unto the said Elizabeth Taylor, her executors, administrators, and assigns, negro girl Amelia, aged about sixteen years, a slave for life, and I hereby warrant and defend the said negro to be a slave for life, and the full and entire property of the grantee herein named, according to the effect and
132 true intent thereof.

In witness whereof I have hereto set my hand and seal this 12th day of November, one thousand eight hundred and fifty-six.

GEORGE T. CRAUFURD. [SEAL.]

Signed, sealed, and delivered in the presence of—the words "Amelia" and "November" being first interlined—

D. C. DEGGES.
CEPHUS R. BENSON.

STATE OF MARYLAND,
Prince George's County, set:

Personally appeared on this 12th day of November, 1856, before the undersigned, a justice of the peace of the State in and for the county

aforesaid, George T. Craufurd, who is personally known to me to be the party grantor to the above deed of gift, and acknowledged the same to be his act and deed, for the purpose therein mentioned.

C. R. BENSON, *J. P.*

Enrolled the 13th day of November, 1856.

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the foregoing is truly taken and copied
133 from liber C. S. M., No. 1, fol. 410 and 411, one of the land records of said county.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the circuit court for Prince George's County this thirteenth day of January, anno Domini one thousand eight hundred and sixty.

CIRCUIT COURT OF PRINCE GEORGE'S COUNTY. [SEAL.]

CHA'S S. MIDDLETON,
Clerk of the Circuit Court for P. G. County.

EXHIBIT C.

Know all men by these presents that I, Daniel R. Wall, of Prince George's County, in the State of Maryland, for and in consideration of the sum of ten dollars, current money, to me in hand paid by Elizabeth Taylor, of the county and State aforesaid, at and before the sealing and delivery of these presents, the receipt whereof, I, the said Daniel R. Wall, do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Elizabeth Taylor, her executors, administrators, and assigns, the following property hereinafter mentioned, that is to say: one wagon and harness, one bay
134 horse nine years old, one sorrel horse about twelve years old, all and singular which said property are now remaining, standing, and being in my possession. To have and to hold all and singular the said property and other the premises above bargained and sold, or mentioned and intended so to be to the said Elizabeth Taylor, her executors, administrators, and assigns, forever; and I, the said Daniel R. Wall, for myself, my heirs, executors, and administrators, all and singular the said property and premises unto the said Elizabeth Taylor, her executors, administrators, and assigns, against me, the said Daniel R. Wall, my executors, administrators, and against all and every other person and persons whatsoever, shall and will warrant, and forever defend by these presents, of all and singular which said property and other the premises I, the said Daniel R. Wall, have put the said Elizabeth Taylor in full possession, by delivering to her, the said Elizabeth Taylor, one sorrel horse at the sealing and delivery of these presents, in the name of the whole premises hereby bargained or mentioned, and intended so to be, unto the said Elizabeth Taylor aforesaid.

135 In witness whereof, I have hereunto set my hand, and affixed my seal, this 20th day of March, anno Domini, 1857.

D. R. WALL. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. R. BROOKS.

STATE OF MARYLAND,
Prince George's County, sct:

Be it remembered, and it is hereby certified, that, on this 20th day of

March, eighteen hundred and fifty-seven, before the subscriber, one of the justices of the peace of the county and State aforesaid, personally appeared Daniel R. Wall, he being known to me to be the person who is named and described as and professing to be a party to the aforegoing bill of sale or instrument of writing, and doth acknowledge the said instrument of writing to be his act and deed; and also, at the same time and place, came before me, the subscriber, a justice as aforesaid, Elizabeth Taylor and made oath on the Holy Evangely of Almighty God the aforegoing bill of sale is just and bona fide, and the matter and things therein set forth is true and bona fide set forth.

Given under my hand and seal the day and year aforesaid.

THOMAS R. BROOKS, *J. P.* [SEAL.]

Enrolled 21st day of March, 1857.

136 STATE OF MARYLAND,
Prince George's County, set:

I hereby certify that the aforegoing bill of sale is truly taken and copied from liber C. L. M. No. 1, fol. 521 &c, one of land record-books of said county.

{ CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. [SEAL.] } In testimony whereof, I have hereunto set my name, and affixed the seal of the circuit court for Prince George's County, this 13th day of January, anno Domini, one thousand eight hundred and sixty.

C. S. MIDDLETON,
Clerk of the Circuit Court for Prince George's County.

The State of Maryland to the sheriff of Prince George's County, greeting:

You are hereby commanded to summons Charles S. Middleton, clerk of the circuit court for Prince George's County, and Henry Brooke, his deputy clerk, that, all excuses and delays being set aside, they be and appear before the justices of the orphans' court, at a session of the said orphans' court of Prince George's County, to be held at Upper Marlborough, on the 17th day of January, 1860, and that they then
137 and there bring with them, and produce at the time and place aforesaid, a deed of gift, bearing date on the 12th November, 1856, executed by one George T. Craufurd to a certain Elizabeth Taylor; and also they bring with them a certain other deed of gift or bill of sale from Daniel R. Wall to a certain Elizabeth Taylor, bearing date on the 20th March, 1857; and then and there to testify, and all and singular those things which they know of the said deeds of gift, and bills of sale, a conveyance do impart of one concerning a certain matter of controversy in the said orphans' court, pending between Richard S. Blackburn and George T. Craufurd, and as touching the right of administration upon the personal estate of David Craufurd, late of Prince George's County, deceased, now pending between the said Richard S. Blackburn and the said George T. Craufurd, on the part of the said Richard S. Blackburn. Hereof fail not at your peril, and have you then and there this writ.

{ ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND. [SEAL.] } Witness, William B. Hill, esquire, chief judge of the orphans' court for Prince George's County, this 17th day of January, 1860.

Issued 17th day of January, 1860.

WILLIAM A. JARBOE,
Reg'r of Wills for P. G. County.

The foregoing summons returned endorsed thereon:
"Summoned Brooke; not sum'd Middleton.
"D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE,
Reg'r of Wills for P. G. County.

The State of Maryland to the sheriff of Prince George's County, greeting:

You are hereby commanded to summons Charles S. Middleton, clerk of the circuit court for Prince George's County, and Benjamin H. Mulliken, his deputy clerk, that, all excuses and delays being laid aside, they be and appear before the justices of the orphans' court, at a session of said orphans' court of Prince George's County, to be held at the town of Upper Marlborough on the 24th day of January, 1860, and that they then and there bring with them, and produce at the time and place aforesaid, a deed of gift, bearing date on the 12th of November, 1856, executed by one George T. Craufurd to a certain Elizabeth Taylor;

bearing date on the 20th of March, 1857; and then and there to testify, and show all and singular those things which they know of the said deeds of gift and bills of sale, a conveyance do impart of one concerning a matter of controversy in the said orphans' court, pending between Richard S. Blackburn and *and* George T. Craufurd, and as touching the right of administration upon the personal estate of the said David Craufurd, of Prince George's County, deceased; now pending between the said Richard S. Blackburn and the said George T. Craufurd, on the part of the said Richard S. Blackburn. Hereof fail not at your peril, and have you then and there this writ.

{ ORPHANS' COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND, [SEAL.] } Witness, W'm B. Hill, esquire, chief judge of the orphans's court, for Prince George's County, this 17th day of January, 1860.

Test: W'M A. JARBOE,
Register of Wills for P. G. County.

The aforegoing summons returned endorsed thereon:
"Cope.
"D. R. DYER, *Sheriff.*"

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, greeting:

You are hereby commanded to summons James W. Lowe, so that, all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on Tuesday, 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy in said court touching the right of administration on the personal estate of David Craufurd, late of said county, deceased. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, chief justice of the orphans' court for Prince George's County, this 17th day of January, 1860.

Issued 17th day of January, 1860.

Test: W'M A. JARBOE,
Reg'r of Wills for P. G. County.

The aforegoing summons returned endorsed thereon:
"Summoned.

"D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

Orphans' court for Prince George's County, Md.

STATE OF MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's County, greeting:

You are hereby commanded to summons Dr. John H. Boyle, so that, all delays being set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper
141 Marlborough Town in said county, on Tuesday, 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, the 17th day of January, 1860.

Issued 17th day of January, 1860.

Test: W'M A. JARBOE, *Reg'r.*

The aforegoing summons returned endorsed thereon:
"Summoned.

"D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

Orphans' court for Prince George's County, Md.

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's County, greeting:

You are hereby commanded to summon Henry J. Ball, so that, all delays be set aside, he be and appear before the justices of the or-
142 phans' court of Prince George's County to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief justice of the orphans' court for Prince George's County, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: W'M A. JARBOE, *Reg'r.*

The aforegoing summons returned endorsed thereon:
"Summoned.

"D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

Orphans' court for Prince George's County, Md.

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, greeting:

You are hereby commanded to summons William Duvall, so that, all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day ot January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

143

Witness W'm B. Hill, chief justice of the orphans' court for Prince George's County, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: W'M A. JARBOE, *Reg'r.*

The aforegoing summons returned enclosed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

Orphans' court for Prince George's County, Md.

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, greeting:

You are hereby commanded to summons Thomas Talbert, so that, all delay be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, and now pending in said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

144

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, the 17th day of January, 1860

Issued the 17th day of January, 1860.

Test: W'M A. JARBOE, *Reg'r.*

The aforegoing summons returned endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

Orphans' court for Prince George's County, Md.

MARYLAND, *set:*

State of Maryland to the sheriff of Prince George's County, greeting:

You are hereby commanded to summons J. J. Jarboe, so that, all delays be set aside, he be and appear before the justices of the
145 orphans' court of Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before the said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court of Prince George's County, this 17th day of January, 1860.

Issued 17th day of January, 1860.

Test: W'M A. JARBOE, *Reg'r.*

The above summons returned endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

Orphans' court for Prince George's County, Md.

State of Maryland to the sheriff of Prince George's County greeting:

You are hereby commanded to summons Richard Hopkins, so that, all delays be set aside, he be and appear before the justices of
146 the orphans' court of Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for Richard S. Blackburn, before said court, in the matter of controversy between Richard S. Blackburn and George T. Craufurd, touching the right of administration on the personal estate of David Craufurd, late of Prince George's County, deceased, now pending before said court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, the 17th day of January, 1860.

Issued January 17th, 1860.

Test: W'M A. JARBOE, *Reg'r.*

The above summons returned endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

Orphans' court for Prince George's County, Md.

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, greeting:

147 You are hereby commanded to summons J. J. Jarboe, so that

all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, this 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: W'M A. JARBOE, *Reg'r.*

The above summons returned endorsed thereon:

"Summoned. "D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

Orphans' court for Prince George's County, Md.

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, Md., greeting:

148 You are hereby commanded to summons Harriet Furguson, so that, all delays be set aside, she be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before the said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, chief justice of the orphans' court for Prince George's County, this 17th day of January, 1860.

Issued this 17th day of January, 1860.

Test: W'M A. JARBOE, *Reg'r.*

The above summons returned endorsed thereon:

"Summoned.

"D. B. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

Orphans' court for Prince George's County, Md.

MARYLAND, *set:*

The State of Maryland to the sheriff of Prince George's County, greeting:

149 You are hereby commanded to summons James N. Lowe, so that, all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touch-

ing the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said orphans' court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: W'M A. JARBOE, *Reg'r.*

The above summons returned endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

Orphans' court for Prince George's County, Md.

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's County, greeting:

150 You are hereby commanded to summons James L. Brashears, so that, all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marlborough Town, in said county, on the 24th day of January, 1860, to testify for George T. Craufurd, before the said court, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased, now pending before said court. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, chief judge of the orphans' court for Prince George's County, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

The above summons returned endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

Orphans' court for Prince George's County, Maryland.

MARYLAND, *sct:*

The State of Maryland to the sheriff of Prince George's County, greeting:

151 You are hereby commanded to summons William H. Wilson, so that, all delays be set aside, he be and appear before the justices of the orphans' court for Prince George's County, to be held at Upper Marborough Town, in said county, on the 24th day of January, 1860, to testify before said court for George T. Craufurd, in the matter of controversy between George T. Craufurd and Richard S. Blackburn, touching the right of administration on the personal estate of David Craufurd, late of said county, deceased. Hereof fail not at your peril, and have you then and there this writ.

Witness W'm B. Hill, esquire, chief judge of the orphans' court for Prince George's County, the 17th day of January, 1860.

Issued the 17th day of January, 1860.

Test: W'M. A. JARBOE, *Reg'r.*

The above summons returned endorsed thereon:

"Summoned.

"D. R. DYER, *Sheriff.*"

Test: W'M A. JARBOE, *Reg'r.*

In the orphans' court for Prince George's County.

RICHARD S. BLACKBURN
vs.
GEORGE T. CRAUFURD.

Cross-petition and answer heretofore filed.

152 GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

Supplemental petition of George T. Craufurd, praying for issues to be sent down to the circuit court for Prince George's County, filed in said orphans' court on the 24th day of January, 1860.

To the honorable the judges of the orphans' court for Prince George's County:

The supplemental petition of George T. Craufurd respectfully shows that he is entitled, and hereby requires, that issues be framed by your honorable court touching the matter in controversy between your aforesaid petitioner and the said Richard S. Blackburn; and he submits to your honorable court that the following issues be adopted by your honorable court, and transmitted to the circuit court for Prince George's County for trial, according to the act of assembly in such case made and provided, viz:

First. Whether your petitioner, George T. Craufurd, is one of the next of kin to the said David Craufurd on the part of the father of said David Craufurd.

Second. Whether there is any male other than your petitioner,
153 George T. Craufurd, of the next of kin to the said David Craufurd on the part of the father of the said David Craufurd.

And your petitioner will ever pray, &c.

SAMUEL H. BERRY,
D. C. DIGGES,
EDWARD W. BELT,
W'M J. HILL,
Attorneys for Petitioner.

In the orphans' court for Prince George's County, January 24th, 1860.

Upon the hearing of the supplemental petition aforegoing of George T. Craufurd, requiring issues to be framed touching the matter in controversy between the said George T. Craufurd and the said Richard S.

Blackburn, it is ordered by the orphans' court of Prince George's County, this 24th day of January, 1860, that the aforegoing two issues asked for by the petitioner in his aforesaid supplemental petition, and the additional issues offered by the said Richard S. Blackburn as the third issue, to wit:

Third. Whether the said Thomas B. Craufurd was ever lawfully married to the said Elizabeth Taylor, either before or after the birth of the said George T. Craufurd. To be transmitted to the circuit
154 court for Prince George's County for trial, according to the act of assembly in such case made and provided.

W'M B. HILL,
BASIL R. DUCKETT,
W'M R. BARKER,
Judges of the Orphans' Court for Prince George's County.

Orphans' court for Prince George's County, Md.

STATE OF MARYLAND,
Prince George's County, set:

I, William A. Jarboe, register of wills for the county, in the State aforesaid, do hereby certify that the aforegoing matter is truly copied from the records and proceedings of the orphans' court of Prince George's County.

In testimony whereof I hereunto set my hand and affix the seal of the orphans' court for Prince George's County, this 14th day of March, anno Domini, one thousand eight hundred and sixty.

Test:

W'M A. JARBOE,
Register of Wills for P. G. County.

155 And now here at this day, to wit, the first Monday in April in the year of our Lord one thousand eight hundred and sixty, come into court here as well the said Richard S. Blackburn as the said George T. Craufurd, by *by* their attorneys aforesaid.

And whereupon the said George T. Craufurd files in court here the following petition, to wit:

In the circuit court for Prince George's County. April term, 1860.

RICHARD S. BLACKBURN *vs.* GEORGE T. CRAUFURD. } Transcript from the orphans' court of Prince George's County.

GEORGE T. CRAUFURD *vs.* RICHARD S. BLACKBURN. } Same.

To the Honorable Peter W. Crain, esquire, judge of the circuit court for Prince George's County:

George T. Craufurd, one of the parties to the above suit, suggests to the court here that he cannot have a fair and impartial trial of said cause in this court, and prays that your honors will pass an order directing that the record of proceedings in said suits be transmitted to
156 the court of any adjoining county to hear and determine the same.

GEORGE T. CRAUFURD.

STATE OF MARYLAND,
Prince George's County, to wit:

On the fourth day of April, in the year of our Lord one thousand eight hundred and sixty, personally appeared before the subscriber, a justice of the peace of said State, in and for said county, George T. Craufurd, the above party, and made oath on the Holy Evangely of Almighty God that the matters and things stated in the above suggestion are true, to the best of his knowledge and belief.

J. W. SCOTT, *J. P.* [SEAL.]

Whereupon the court here passed the following order, viz:

In a circuit court for Prince George's County.

It is ordered, this fifth day of April, anno Domini eighteen hundred and sixty, on the within suggestions and affidavit, that the record in this case, with all the papers appertaining to the same, be transmitted by the clerk of this court to the circuit court of Charles County, with a list of witnesses, for trial in that court.

PETER W. CRAIN.

157 In pursuance of the aforegoing order, all and singular the proceedings in said cause, with all things thereto relating, are hereby transmitted to the circuit court for Charles County.

Test:

CHARLES S. MIDDLETON, *Clerk.*

Circuit court for Prince George's County, Md.

STATE OF MARYLAND,
Prince George's County, set:

I hereby certify that the aforegoing is truly taken and copied from the records and proceedings of the circuit court for Prince George's County.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the circuit court for Prince George's County, this 27th day of April, anno Domini, 1860.

CHARLES S. MIDDLETON, *Clerk.*

And now here, at this day, to wit, the first Monday of May, being the seventh day of the same month, in the year of our Lord one thousand eight hundred and sixty, come into the said circuit court for Charles County the said George T. Craufurd, by Samuel H. Berry, Thomas G. Pratt, Robert J. Brent, George Brent, Edward W. Belt, and Walter Bowie, esq'rs, his attorneys, as the said Richard S. Blackburn,
168 by Thomas T. Bowie, C. C. Magruder, J. S. Alexander, F. Stone, John B. Brooks, and John N. Mitchell, esq'r's, his attorneys.

And thereupon, for trying the issues aforesaid framed, between the parties aforesaid, it is ordered by the court here that twenty-five persons from the panel of petit jurors returned to the court here by the sheriff of the county aforesaid be drawn by ballot, according to the directions of the act of assembly in such cases made and provided; and the panel of petit jurors returned to the term being called, seventeen of said jurors, and no more, appeared. Whereupon the said George T. Craufurd moved the court that eight talesmen be summoned to form, with the said seventeen, a complete panel of twenty-five jurors, and that

from the panel of twenty-five twenty names be drawn by lot, from whom the petit jury of twelve may be taken, as directed by law; and thereupon, the *twelve* persons being drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel of the respective parties, and the counsel for each of the said parties having stricken out four persons from the said list, the remaining twelve persons, being called, come, that is to say, John T. Colton, Leonard Tarrall, Henry Muschett, Henry A. Neal, James A. Mudd, Henry S. Dent, W'm Hamilton, George Taylor, Thomas R. Halley, Richard B. Posey, Jonas H. Hawkins, and James W. Busch, who were empan'elled and sworn
159 to say the truth in the premises.

Whereupon the said plaintiff, by his attorneys aforesaid, prays the court to grant the following prayers, which were granted by the court:

No. 1. If the jury believe from the evidence that a marriage was solemnized between the said Elizabeth Taylor and the deceased, Thomas B. Craufurd, at the time and in the manner stated by the said Elizabeth, and if they further find that George T. Craufurd, named in the issues in this cause, is the child of the said Thomas B. Craufurd and Elizabeth Taylor, born more than two months after said intermarriage, and that the said George T. Craufurd is the nearest male relative of the said David Craufurd, on the part of the father of the said David Craufurd, then their verdict must be for the said George T. Craufurd.

No. 2. If the jury find from the evidence that, for several years before his death, the said Thomas B. Craufurd, and the witness, Elizabeth Craufurd, otherwise called Elizabeth Taylor, cohabited; that the said Elizabeth became the mother of four children, now living, who were acknowledged by the said Thomas B. Craufurd to be his children; that the said children were educated and supported at the expense of,
160 and by the said Thomas B. Craufurd, and were required by him to be called by the name of Craufurd; and if the jury further find that during a part of this time the said Elizabeth resided at the place called Monterey, and that, during her residence at Monterey, the said Thomas B. Craufurd stated, on several occasions, that he had married the said Elizabeth, and would bring her to his residence at Greenwood, so soon as his brother, Dr. David Craufurd, should remove therefrom; and that thereafter the said David Craufurd removed from said residence at Greenwood; and that, shortly afterwards, the said Thomas B. Craufurd, in 1844, brought the said Elizabeth and her said children to his residence at Greenwood; and if they further find that, from that time and during the residue of his life, he and the said Elizabeth cohabited at his residence, as man and wife, and that the said Elizabeth, during that time sat at the head of his table, presided over the household affairs at Greenwood, with the assent of the said Thomas B. Craufurd; and that on several occasions, during that time, he acknowledged that the said Elizabeth was his wife; then the jury may, upon the foregoing facts, presume a lawful marriage between the said Thomas
161 B. Craufurd and the said Elizabeth, notwithstanding the other testimony in the cause; and if the jury, from the whole evidence in the case, find such marriage, their verdict must be in favor of the said marriage between the said Thomas and Elizabeth.

No. 3. That if the jury shall, from all the evidence in this cause, find that a marriage was had between the said Thomas B. Craufurd and the said Elizabeth Taylor, then the said marriage cannot be invalidated, because the jury may find that no marriage license was previously had.

And thereupon the said defendant, by his attorneys aforesaid, prays the court to grant him the following prayer, which was also granted:

That, on all the evidence in this cause, it will be competent for the jury to find that the cohabitation between the said Thomas B. Craufurd, deceased, and Elizabeth Taylor, during the entire period of such cohabitation, was illicit, and that no marriage was solemnized between them; and if the jury shall so find, their verdict ought to be for the defendant on the third issue.

And the jurors aforesaid, upon theirs oaths do say, that the said George T. Craufurd is not one of the next of kin to the said Crau-
162 furd on the part of the father of the said David Craufurd; and the jurors aforesaid, upon their oaths aforesaid, do further say, that the said Thomas B. Craufurd was never lawfully married to the said Elizabeth Taylor, either before or after the birth of the said George T. Craufurd; and they therefore find a verdict for the said defendant in all of the said issues. It is therefore considered by the court here that the said defendant recover against the said plaintiff the sum of one hundred and seventy two $\frac{46}{100}$ dollars, by the court, on his assent, adjudged unto the said defendant for his costs and charges by him about his defence in this behalf laid out and expended, &c.

MEMO.—Before the jurors aforesaid withdrew from the bar of the court here, the said parties, by their attorneys aforesaid, filed in court here the following bills of exceptions:

Circuit court for Charles County.

GEORGE T. CRAUFURD *vs.* RICHARD S. BLACKBURN. } Issues.—First exception.

Those issues being called for trial, and the panel of petit jurors returned to the term being called, seventeen of said jurors and no more appeared; whereupon the said Craufurd moved the court that
163 eight talesmen be summoned to form, with said seventeen, a complete panel of twenty-five jurors; and that from the said panel of twenty-five twenty names be drawn by lot, from whom the petit jury of twelve may be taken, as directed by law. To which the said Blackburn objected, and moved that so many talesmen be summoned as, with with the petit jurors of the regular panel in attendance, would form the number of twenty jurors, from whom the petit of twelve may be struck; but the court overruled said objection, and ordered eight talesmen to be summoned, and they were summoned accordingly; and their names being put into the box with the names of the seventeen of the regular panel in attendance, twenty names were drawn therefrom, and each party was required to strike and do strike four names, and the remaining twelve jurors were empan'elled and sworn to try the said issues; to which ruling of the court and empan'elling of the jury aforesaid, the defendant excepted, and prayed the court to sign and seal this bill of exception, which is done accordingly, this 21st day of May, 1860.

PETER W. CRAIN. [SEAL.]

Circuit court for Charles County.

164 GEORGE T. CRAUFURD *vs.* RICHARD S. BLACKBURN. } Issues.—Second exception.

After the jury had been empan'elled and sworn, as stated in the first

exception, the said Craufurd claimed the right of opening and concluding the case before the jury. The said Blackburn, on his part, insisted and claimed that of right he was entitled to open and conclude the case before the jury. Whereupon the court here adjudged and ordered that the said Craufurd be the plaintiff, and as such is entitled to the opening and concluding of these issues before the jury; and that the said Blackburn be the defendant thereto; to which ruling of the court the said Blackburn excepted, and prayed the court here to sign and seal this bill of exception, which is accordingly done, this 21st day of May, 1860.

PETER W. CRAIN. [SEAL.]

Circuit court for Charles County.

GEORGE T. CRAUFURD
vs.
RICHARD S. BLACKBURN.

At the trial of these issues the plaintiff, to sustain the issues on
165 his part, produced Mrs. HARRIET FURGUSSON, a competent witness on his part, who being duly sworn, proved that she knew Thomas B. Craufurd, and had known him for twenty-two years; she lived upon his property eleven years before he died, during which time her former husband, Mr. Stone, was the miller and overseer for Mr. Craufurd; Mr. Craufurd died about 12 years ago, and she and her husband left there the June after his death; she knew Elizabeth Taylor, or Mrs. Craufurd, when she lived at Monterey, in 1842. The witness stated that she was joking Thomas B. Craufurd about his getting married. He told her in the presence of her husband, Mr. Stone, that he was married; that he had been married for several years to Elizabeth Taylor, and that they were married in Washington by a priest, but did not mention his name. He further stated that his brother, David Craufurd, was very curious, and he did not want his marriage divulged to him. The witness further stated, that she frequently bought butter and eggs from Mr. Craufurd, and was referred by him after the year 1842, generally, to his wife, Mrs. Craufurd, or sometimes to Betsey. The witness further stated, she again heard Thomas B. Craufurd, in the year 1843, say that he was
166 married to Elizabeth Taylor; Mr. Craufurd and her late husband, Mr. Stone, were talking about a marriage which had taken place a short time before in the neighborhood, and were remarking about the evening on which it happened being very gusty, when Mr. Craufurd said that the day on which he, Mr. Craufurd was married, was a very fine one; he also repeated what he had before said relative to his marriage in the year 1842. The witness further said, that Mrs. Craufurd remained at Monterey until about four years before the death of Thomas B. Craufurd, when she removed to Greenwood, the family residence of the Craufurds. When she, Mrs. Craufurd, lived at Monterey, she went backwards and forwards to Greenwood with her children, and Mr. Craufurd would frequently take the children down to Monterey from Greenwood on his horse before him; the distance was about a mile. The witness further testified, that Mrs. Craufurd had control of everything at Monterey, which was on Mr. Craufurd's land, and that after she went to Greenwood, she went through the house and acted in every respect as any other gentleman's wife would at the house of her husband.
167 The witness further proved, that Mr. Craufurd treated her (Mrs. Craufurd) very kindly, and was very affectionate to the children; that she (Mrs. Craufurd) rode about with him frequently in his carriage;

she further proved that when she first knew Mrs. Craufurd she was a very beautiful woman.

Upon cross-examination this witness testified that her maiden name was Harriet Sweeney; that her first husband was the miller of Mr. Craufurd; that he was at the mill for nine years. She heard the news circulated that Mr. Craufurd was married, and, therefore, she spoke of it to him. She further testified that she visited Mrs. Craufurd from the year 1838 to 1842, while at Monterey, and after she went to Greenwood. She further testified that her husband was the miller of Mr. Craufurd for nine years, and acted one year as his overseer, and that they moved from Mr. Craufurd's in June, after Gen'l Bowie took possession of the property.

This witness further testified that she never mentioned this fact of Craufurd's marriage until yesterday, but that she and her husband talked of it frequently. This witness further testifies that her former husband, Stone, has been dead for seven years, and that she was married to her present husband on the 12th of December last.

168 This witness further testifies that she bought butter and eggs from Mr. Craufurd; that he spoke of her as his wife, and sometimes called her Betsey. The witness further testified that, when she first knew her she called *his* Miss Betsey; and about the year 1841 or 1842 she heard she was married, and she then called her Mrs. Craufurd, and sometimes Betsey, in and out of the presence of Thomas B. Craufurd. This witness, being examined, further testified, that Mrs. Craufurd went to Greenwood, backwards and forwards; that Mr. Craufurd took the children down on his horse before him. This witness further testified that, as to saying she had never told what she said about the marriage till yesterday, she meant she had never told it until after she was summoned as a witness in this case. She mentioned it to the attorneys in Upper Marlborough, but that she never mentioned it to her present husband, and that she does not recollect mentioning it to Mrs. Duvall.

The plaintiff, further to sustain the issue on his part, produced Mr. NATHANIEL TUCKER, who, being duly sworn, proves that he now resides in Howard County; that he resided in Prince George's County until last year; and this, that he lived near Mr. Tho's B. Craufurd; that he, Crawford, told him that he was married to Elizabeth Taylor, and

169 introduced her as his wife; that she presided at his table; spoke of her as his wife, and the children as his; that he treated them very kindly, as much so as any other father. He, the witness, called her Mrs. Craufurd. He further testified that Thomas B. Craufurd told him the reason he did not bring his wife home was because Dr. Craufurd was living there, but that he, the Dr., was having a log cabin built, and that, after Dr. Craufurd left Greenwood, he brought her home.

This witness further testified, that he was overseer for Dr. David Crawford; that Mr. Tho's B. Craufurd's children used to go by his house to school. Dr. Craufurd saw the children coming home, and asked him whose they were. He, the witness, told him that some were his, and some Mr. Thomas Crauford's. Dr. Craufurd then said, "By G—d, think of Thomas Craufurd throwing himself away with a dirty, poor woman." This witness further testified, that he sold turkeys to Thomas B. Craufurd; Mrs. Craufurd gave money, at his request, to pay for them. They often rode out together, and she presided at his table.

This witness further testified, that when Dr. Craufurd's house burnt down, he went to live with Thomas B. Craufurd. He further testified,

that the first conversation with Tho's B. Cranford, in which he
170 spoke of his marriage, was before Dr. Cranford left his house. He, the said Thomas B. Cranford, said, "That he did not want his marriage talked of; he did not want Dr. Cranford to know it until he left his house." This witness, upon cross-examination, testified that the conversation with Dr. Cranford, while living at his new house, mentioned to Brashears and his brother, was on the first of January or February. The witness does not recollect having mentioned it before Dr. Cranford's death.

The plaintiff, further to sustain the issues on his part, produced WILLIAM H. WILSON, who, being duly sworn, proves that he resides in Centreville, Prince George's County; that he is teacher of a school; has educated the children of Mr. Cranford—possibly all. Mr. Cranford put them there when they first came. He, the witness, called them Taylor. Mr. Cranford made him change their names, and called them Cranford, but assigned no reason for the change. Mr. Cranford furnished their books. He, Cranford, often came, sometimes twice a week, and brought the children home in his carriage. He was sometimes alone, and sometimes with Mrs. Cranford. After she came to Greenwood, he, the said witness, was frequently there. Mrs. Cranford presided at table, and had the management of everything. He, the
171 said witness, further testified, that he was at a party at Monterey. Mr. Cranford was there; his treatment to Mrs. Cranford was remarkably kind. He, the witness, saw *so* difference in treatment from any other man to his wife. He, the witness, further testified, that Thomas B. Cranford had four children, viz, Sarah, George, Mary, and Victoria Ann, and Mrs. Cranford told him he had put the girls to a school at a Catholic asylum in Washington. Upon a cross-examination this witness testified that Mr. Thomas B. Cranford called her Betsey. but he always called her Mrs. Cranford in his, Mr. Cranford's, presence,

The plaintiff, further to sustain the issues on his part, produced JOHN S. SUIT, who, being duly sworn, proves that he knew Thomas B. Cranford all his life; that he did a good deal of business for him after his eyesight became bad, fifteen or seventeen years ago; that he saw him after the operation on his eyes. His servants were pretty bad, and some of them had stolen silver. He, the said witness, told him he ought to have some white person there, and he ought to get married. Mr. Cranford told him he was married to Betsey Taylor, and had been married for some time, and he was soon going to bring her to his house, when David Cranford left, which he did. This witness further testified that he bought some servants from Tho's B. Cranford, and he told him to pay the money to his wife, which he did. This witness further
172 testified that he bought a man for his brother from Thomas B. Cranford, and he, the witness, paid the money to his wife, by his directions; that Mr. Cranford treated Mrs. Cranford as any other man would his wife; that he has been at his table, and his wife presided. Thomas B. Cranford sent the children to school. This witness further testified that old Mrs. Cranford lived with Thomas B. Cranford. He has heard him say that her mind was affected. He says that he did not know Bushrod Cranford; he died in the asylum in Baltimore. He, the witness, always called her Mrs. Cranford in the presence of Thomas B. Cranford.

Upon a cross-examination, this witness further testified that he fre-

quently heard Thomas B. Craufurd call her his wife, sometimes Betsey; he does not recollect telling any one.

The plaintiff, further to sustain the issues on his part, produced JAMES L. BRASHEARS, who, being duly sworn, proves that he knew *Mrs.* Tho's B. Craufurd; lived with him in the year 1846; sold grain and stock, and paid the money, by his direction, to Mrs. Craufurd. Sold two negroes, and paid the money over to the madam; she managed affairs about the house. The witness further testified that Mr. Craufurd treated her very kindly; called the children his, and was very fond of them; sent them to school; knows he sent the carriage for them.
173 Mr. and Mrs. Craufurd went to Washington; saw them there, and paid money to her; they rode out together. Upon cross-examination this witness further testified that he lived with Thomas B. Craufurd in the year 1846; left in the year 1847, and returned in 1848. Never told anybody that Thomas B. Craufurd had told him that he was not married. Mr. Bowie spoke of her as Mrs. Craufurd; may have, sometimes towards the last, called her Miss Betsey.

The plaintiff, further to maintain the issue on his part, produced JAMES W. LOWE, who, being duly sworn, testified that he knew Mr. T. B. Craufurd and Miss Elizabeth Taylor from the time he was a small boy. When he went away she was at Monterey, and when he returned home, was at Greenwood. He called her Betsey, and sometimes madam; she acted as if she was mistress. Tried a pair of horses for them; Mr. & Mrs. Craufurd rode out, and when they returned Mr. Craufurd bought them. This witness further testified that Mr. Thomas B. Craufurd was shy of the doctor; told him not to interfere with anything of his; did not wish to make him mad. Was present when Mr. Suit paid money; asked if he should pay to him or his wife. This witness does not recollect the answer of Mr. Craufurd, whether he said, "Pay to Betsey, madam," or his wife. They rode out together. He was very
174 kind to her and the children. When she was young she was regarded as a very beautiful woman. When he bought anything he got the money from Mrs. Craufurd, by his directions. The transactions about the sale of negroes were 15 years ago. He called her Mrs. Craufurd.

The plaintiff, further to maintain the issues on his part, produced JAMES J. JARBOE, who, being duly sworn, testified that he resides in Prince George's County; has been living there for twenty years. Knew Mr. and Mrs. Craufurd. Have been at his house several times together; they were then at a party. She was recognized as his wife. He introduced her to several persons in the presence of Mr. Craufurd as Mrs. Craufurd. This witness further testified that he was postmaster before 1840; was turned out, and reappointed by Tyler. Mr. and Mrs. Craufurd often came to the postoffice. He has seen them pass by when Mr. Craufurd told him he was going to Washington, and often passed by for the children when going to school to Mr. Wilson. Mr. Craufurd came by church and left his wife, and came up to his house. His (the witness's) blacksmith repaired carriage, garden implements, &c., for her, and he paid for them. Often spoke to his wife in his presence, and called her Mrs. Craufurd. Mr. Craufurd did not get angry at it.
175 The witness further testified that, after the removal to Greenwood was the time they visited his house; that he presented a bill to Mr. Craufurd, and he turned to Mrs. Craufurd and said, "Betsey,

we must muster the money to pay the old man." On the day fixed for payment he heard he was ill, and did not go, and then heard of his death. Mr. Craufurd invited him to a party at Monterey. He received him—was master of ceremonies. She received the ladies while living at Monterey. Mr. Cranfurd sent there constantly; the servants there were Mr. Craufurd's. Letters came for Mrs. E. Craufurd; he gave them to Mr. Craufurd, and he handed them over to her. Upon cross-examination this witness further testified that he was appointed postmaster under Mr. Tyler; that letters came to the postoffice after Mrs. Craufurd went to Greenwood. He called her Mrs. Craufurd to her face, but, perhaps, when not present, Miss Betsey.

The plaintiff further to maintain the issues on his part, produced Mrs. MARGARET NORFOLK, who, being duly sworn, testified that she had been at the house of Mr. Thomas B. Craufurd; was there in January, 1848; she believes it was seven or eight o'clock at night; saw her for the first time; was introduced to her as Mrs. Craufurd; she sat at the head of
176 the table, and Mr. Craufurd at the foot; after tea she talked with Mr. Craufurd about his children; he told her that two of them were at school; he showed their embroidery, piano, &c. This witness further testified that she left next morning, and bid Mrs. Craufurd good-bye; she considered her the wife of Mr. Craufurd, and recognized her as such. This witness further testified that she saw her at a circus in Upper Marlborough, two or three years after the death of Mr. Craufurd; she was with Gen'l Bowie, who told her it was Mrs. Craufurd.

The plaintiff, further to maintain the issues on his part, produced WILLIAM W. FOWLER, who, being duly sworn, testified that he lived several years in Prince George's County; have known Mr. Craufurd since 1839; in 1843, as nearly as he can recollect, he called her Miss Betsey Taylor; Mr. Craufurd told him it was not Miss Betsey Taylor, but Mrs. Craufurd; he seemed not to like his calling her Miss Betsey; he said she was not Miss Betsey Taylor, but Mrs. Craufurd, my wife, and these are my children; once after this he called her Mrs. Craufurd in his (Thomas B. Craufurd's) presence, and he did not dislike it; he said that he was building a cider mill, and was working for Mr. Jarboe; Mrs. Craufurd was present and two of her children; Mrs. Craufurd was in the
177 door, and Mr. Craufurd on the steps, at Greenwood house.

The plaintiff, further to maintain the issues on his part, produced ELIZABETH CRAUFURD, who, being duly sworn, testified that she was fifty-two years of age in January last, and that her maiden name was Elizabeth Taylor; about thirty years she became acquainted with Thomas B. Craufurd; she also knew Dr. Craufurd, and became acquainted with him before she knew Thomas B. Craufurd; she became acquainted with Thomas B. Craufurd while she lived with her mother, on a place rented from Misses Magruder. Her intimacy commenced with Thomas B. Craufurd at that place. She and her mother afterwards removed to Monterey, a place owned by Thomas B. Craufurd, where her mother died; her step-father, who had been living at Monterey with them, left, and she and her brother continued to live there. Her eldest child was born there about twenty-eight years ago. The house at Monterey was furnished by Mr. T. B. Craufurd, as were also all the servants. Her intercourse with Tho's B. Craufurd was not commenced and assented to under a promise of marriage. Soon after its commencement Thomas B. Craufurd often said he would like to marry her, but owing to his

family he could not marry her then. When the child, Sarah, was
178 about eight months old she went to Washington City to have her christened, and also to visit her sister, Mrs. Evans, who was the wife of the sexton of St. Patrick's Church in that city; the child was christened in the church on Sunday, after eleven o'clock service; as she went out the Rev. Mr. Fiziac, who had performed the ceremony, and was one of the officiating priests there, followed her and had a long conversation with her about the mode of her life. He told her that the salvation of her soul was of more importance to her than anything else, and that she could not be saved if she continued living in sin with Mr. Craufurd. The conversation was a long one, and at his instance, she made up her mind if Mr. Craufurd would not marry her to leave him. Mr. Craufurd had sent the carriage up for her to come home; she sent it back on that Sunday evening with a request that Mr. Craufurd would come up the next day. He accordingly came up, and she had a long interview with him; she related to him what Mr. Fiziac had told her, and that the salvation of her soul was of more importance to her than all things else in this world; she must separate from him if he would not marry her. He replied that he did not know about it, but that he could not marry her unless the marriage was kept secret from his
179 mother and his brother, Dr. David Craufurd. She assented that the marriage should be kept secret, and he then consented to marry her; she agreed that the marriage should take place the next day; on the next day, Tuesday, they went to St. Patrick's Church, and were there married by the Rev. Mr. Fiziac; her sister, Mrs. Evans, and her brother, Sam. Taylor, were present; both of them are now dead; Mr. Thomas B. Craufurd returned home that evening; she remained with her sister until the following Sunday, and then returned home to Monterey in Mr. Thomas B. Craufurd's carriage. Mr. Thomas B. Craufurd often after marriage objected to his brother Dr. David Craufurd knowing anything about it, for if he did neither her nor his children would ever get a cent of his, Dr. Craufurd's, property. Her children, George and Victoria, were born after the marriage; George was born some ten or twelve months after it. From the time of the marriage she and Thomas B. Craufurd lived together as man and wife—about four years and a half before the death of Thomas B. Craufurd, he took her and the children to live with him at Greenwood, the place where the Craufurd family had been living; she took charge of the house at Greenwood, and sat at the head of the table; she made purchases for the family, and, at the
180 request of Mr. Craufurd, kept his money. She always kept the marriage *the marriage* secret, and never disclosed it until after the death of Dr. David Craufurd; she then disclosed it to Mr. William Hill, who called upon her and asked her about it; he told her he had heard it rumored, and wanted to know the facts from her; she then, for the first time, told all about it to him. Mr. Thomas B. Craufurd was always very kind to her; he sent the children to school, first to Wilson, and afterwards sent the girls to Washington; the school bills were paid by him through her; he gave her the money to pay them; she also frequently purchased goods for the family in Washington and elsewhere; when she went to Washington she went in Mr. Craufurd's carriage, and he occasionally went with her. When she first went to Greenwood, Dr. David Craufurd came there more frequently than afterwards; she always avoided him when he came, because she knew his dislike to her and the children. Dr. Craufurd ceased visiting Greenwood for some time before the death of Mr. Craufurd, and was not there when he died. She was with Mr. Craufurd at the time of his last attack; he was first attacked

on the front porch at Greenwood; while in the act of stooping to wash he fell; she was close by in the house, and was the first one to get to him; this was about 6 o'clock, a. m.; he was carried into the house
181 and placed upon a bed, and a physician immediately sent for. He rallied partially about one o'clock, and called for Boss; the child was handed to him, but he soon relapsed, and did not again revive that she saw before his death. Boss was the nickname by which he called George T. Craufurd, our child.

When cross-examined, this witness further testified that it was over a month after the death of Dr. Craufurd when she communicated her marriage to Mr. William Hill; that she had never before that time told the marriage to any person at all; nor did she tell Mrs. Boone, Thomas Talbert, or Miss Mary Warring that she was not married. She never heard Mr. Craufurd introduce her as his wife; he did introduce her to strangers, but how he introduced her she does not remember. She did not visit with Mr. Craufurd in the families of the large landed proprietors in the neighborhood, as Drs. Lee and Boyle; when visiting she was sometimes called Mrs. Craufurd and sometimes Miss Betsey Taylor. In the family of Mr. Judson Jarboe she was addressed as Mrs. Craufurd. Her first intimacy commenced with Mr. Thomas Craufurd about thirty years ago, and it was not under the promise of marriage; about two years after its commencement she went to Monterey. She had six children; the *the* oldest and the youngest are dead, and both died
182 in the lifetime of Thomas B. Craufurd; the oldest was born in June and died in August. At the time of her marriage she stayed at her sister's, Mrs. Evans. Thomas B. Craufurd did not stay there with her. He told her he stayed at Brown's Hotel.

The plaintiff, to maintain the issues on his part, produced the Rev. Mr. BOYLE, who, being duly sworn, testified that he was the assistant priest at St. Patrick's Church, in Washington City; that Mr. Walter is the chief pastor; that he has been there for seven years; that the church record of marriages, as far as he has been able to find any, commenced in 1848; baptismal records in 1823; he reads from the record: "Sarah Jane, natural child of Elizabeth Taylor, born 31st December, 1834, and baptized 30th of August, 1835; sponsor, Sarah Evans." (Admitted that Mr. Fiziac was at St. Patrick's Church on 30th of August, 1835, as a priest and pastor.) If the entry was the child of Thomas B. Craufurd and Elizabeth Taylor, it would indicate the child was legitimate.

Upon cross-examination, this witness further testified that there is no disciplinary order of the church *of the church* of having licenses, but as the ministers are law-observing men, they generally require the license.

Upon re-examination this witness further testified that Mr.
183 Thomas F. Bowie first called upon him; applied last week; came with Mr. McNamee; would marry under the circumstances, without license.

The plaintiff, further to maintain the issues on his part, produced NATHANIEL SUIT, who, being duly sworn, testified that he has known Mr. T. B. Craufurd about forty years; he was a son of Nathaniel Craufurd; he lived at Greenwood; Nathaniel Craufurd married Miss Blackburn, of Va.; Mr. Craufurd was deranged; Blackburn Craufurd was also deranged, and he carried him to the hospital; Nathaniel died in some queer way, whether from drink or not, he does not know. He, the witness, further stated that no member of the Craufurds deranged before intermarriage with the Blackburns. He further states that George

T. Craufurd is the only male descendant on the part of the Craufurds from the grandfather, Nathaniel Craufurd, now living; Mrs. Craufurd came to Greenwood about a year after the operation on Mr. T. B. Craufurd's eyes; (went there in 1844;) he, the said witness, was the agent of Mr. Craufurd out of doors; he had to stay by his bedside; he told Craufurd he ought to bring the madam home; he said that Dr. David Craufurd would raise the devil if he did; but as soon as he could get rid of Dr. David Craufurd he would bring her home; he said that
184 he did not like to talk of his being married; told him he had been married for some years; may have eight or ten or seven years, to Elizabeth Craufurd; he often spoke of his marriage to him, the witness; treated her in the same manner at Monterey as at Greenwood; paid money to him, and sometimes to her by his directions; she would sometimes chastise (scold) him about having too many friends around him. The witness further stated that he had been at Monterey with Mr. T. B. Craufurd; that he seemed very fond of his wife and children; got money from her; she kept the money generally.

Upon cross-examination this witness further testified that he might have said to Gen'l Bowie there is no use to summon him down there; that he knew nothing about the matter; never said to Gen'l Bowie that Thomas B. Craufurd and Elizabeth Craufurd were not married; never told Gen'l Bowie that T. B. Craufurd got mad, because he had advised Mr. Craufurd to marry Elizabeth Taylor, for he had advised him to marry, and he, Mr. Craufurd, replied they were married; proposed to draw notes to give some of the children more than the others by notes; did not finish execution of these notes; does not know what has
185 become of them; Mrs. Norfolk is the first cousin to George T. Craufurd's wife.

Upon re-examination this witness further proved that Thomas B. Craufurd said that Betsey and the children were provided for by law.

The plaintiff, further to maintain the issues on his part, produced CHARLES RIGEWAY, who, being duly sworn, testified that he knew Thomas B. Craufurd from the year 1845; Mrs. Craufurd he knew from the same time by sight, not personally; has seen her passing in the carriage frequently with him; has seen them frequently passing along the road together to the post office, and to school-house for the children.

The plaintiff, further to maintain the issues on his part, produced JAMES DUCKETT, who, being duly sworn, testified that he lived formerly in Prince George's County, with Mrs. Cain Bowie, at Willow Brook; he knew Thomas B. Craufurd and *Mr.* Craufurd, but not as Mrs. Craufurd; saw her at Greenwood, passing through the house; she appeared to have charge of the house; he has no personal acquaintance with her.

Upon re-examination the Rev. Mr. BOYLE testified that if persons, living together and passing as man and wife, were discovered not to be man and wife, by him, as a minister he would marry privately and
186 without license, to avoid scandal; the book shown is the baptismal register of St. Patrick's Church for the year 1837 and 1838. He reads: "1837, July 30th. George Thomas, son of Thomas Craufurd and Elizabeth Taylor, his wife, born 7th September, 1836. Sponsors, John and Sarah Evans."

And the plaintiff here rested his case.

Whereupon the defendant, to sustain the said issues on his part, pro-

duced FRANCIS M. BOWIE, a competent witness, who, being duly sworn, proved that he was acquainted with the said Thomas B. Craufurd, dec'd, in his lifetime, and for many years before his death, and was frequently at his house in his lifetime, and that the defendant asked the said witness whether, on the occasion of any of said visits to the house of the said Craufurd, he, the said Craufurd, made any statement to him in regard to the character of the intercourse existing between him, the said Craufurd, and Elizabeth Taylor aforesaid; and the said defendant, on being required so to do, stated that in the event of an affirmative answer to said question, he proposed to ask the said witness whether, on such occasion, anything was said about a marriage between the said Craufurd and the said Taylor, and to state all the declarations
187 made by the said Craufurd on that occasion.

Whereupon the plaintiff objected to the question so put to said witness; but the court overruled said objection, and permitted the said question to be asked of the said witness, and to be answered by him.

And thereupon the witness stated that he had such conversation with said Thomas B. Craufurd on the subject of his intercourse with said Elizabeth; and thereupon the said defendant, by his counsel, offered to prove by said witness that after the year 1837 the said Thomas B. Craufurd had declared that he was never married to the said Elizabeth Taylor, and that his children by her were illegitimate.

But the counsel for the plaintiff objected to the admissibility of said proposed evidence, or to the said question being put to the witness. The court overruled the said objection, and permitted the said question to be put and answered by the said witness, and the said evidence to go to the jury.

To which ruling of the court, and to their permitting the said evidence to go to the jury, the plaintiff, by his counsel, excepted and prayed the court to sign and seal this bill of exceptions, which is done this 21st of May, 1860.

PETER W. CRAIN. [SEAL.]

188 Circuit court for Charles County.

GEORGE T. CRAUFURD *vs.* RICHARD S. BLACKBURN. } Issues.—Fourth exception.

After the ruling of the court, as stated in the preceding exception, which is to be taken as a part of this exception, the defendant, further to maintain the issues on his part, proved, by the said Francis M. Bowie, that he knew Thomas B. Craufurd prior to the year 1835, and from the year 1835 up he was frequently at his house, by invitation and otherwise; was on very intimate terms with him subsequent to the *the* year 1837; called *in* at the said Craufurd's, when the said T. B. Craufurd asked him if he had any objection to ride by Monterey, where Betsey Taylor resided; on this occasion he told him to consummate the union by marrying, on account of the respectability of his children; he said he never had married, and never would; he said nothing on that occasion about the disposition of his property; he does not know that the subject was ever referred to between the said Craufurd and himself; he said that Betsey moved down to Greenwood in the year 1843 or 1844; he was at Greenwood after the year 1844, but not so frequently as
189 before that time; had seen Betsey there when he carried a negro home on one occasion; Craufurd said the offence of the nigger

was against Miss Betsey; he asked her to overlook the offence; she said she would; he called her Miss Betsey; on another occasion he dined there, Betsey was at the table; he always addressed her as Miss Betsey. This witness further stated that when he first knew Miss Betsey she lived on Mrs. Louisa Magruder's place; he recollects going with Thomas B. Craufurd, whose eyes were bad, to Bladensburg; at his request said Craufurd told the witness he was going there to attend a trial; he had been warranted for a claim against Elizabeth Taylor; he does not know in whose favor; the witness does not think the case was tried on that day; he cannot fix the time.

Upon cross-examination this witness testified that he knew Dr. Craufurd very well; was an intimate associate of his; it was in the year 1837 that this conversation took place about marrying Betsey Taylor; recollects saying, at his father's table five or six weeks ago, that he had understood that some gentleman said he had to wait for dinner, because his wife was at church and could not have dinner until she returned;
190 he never said he was there upon that occasion, and pronounced it false; he has no recollection that he ever said Thomas B. Craufurd told him that he was or was not married; he may have said that he called her Betsey or Miss Betsey; he was as intimate with Thomas B. Craufurd as any of his family; he called him champion because he killed more birds than any one else; he has never heard Thomas B. Craufurd apologise for a late dinner on account of the absence of his wife.

The defendant, further to maintain the issues on his part, proved by NICHOLAS C. STEPHEN that he recollects being at a trial in Bladensburg in the year 1845. He acted as counsel on that occasion. Thomas B. Craufurd and Mrs. Craufurd came up together. The trial was had. In the course of it Mr. Dorsey remarked that he was bound legally and morally to pay the claim of Betsey Taylor. Craufurd became violent and indignant, and made at Dorsey with a cane, but was prevented by others from injuring Dorsey. He called her, when dining at Craufurd's house, Miss Betsey; never addressed her in any other way.

The defendant, further to maintain the issues on his part, proved by THOMAS TALBERT, who, being duly sworn, testified that he knew Mrs.
Craufurd in the year 1849. He called her Mrs. Craufurd. She
191 said he must not call her Mrs. Craufurd; she had never married a Craufurd, and wished she never had seen one. The witness further said that no one was present who is now alive. Knew Dr. Craufurd; lived close by him in 1849; never saw Betsey Taylor until after T. Craufurd's death; never told him, before that time, to call her Mrs. Craufurd; made no contradictory statements since, in Port Tobacco, to other persons; after she told him, he called her Miss Taylor.

The defendant, further to maintain the issues on his part, proved by Dr. SHEEHY that he had a conversation with Nathan Tucker; he commenced the conversation himself; said he did not think Thomas Craufurd and Elizabeth Taylor were married; if he was sworn he would say so; asked H. J. Ball if he thought so. Ball said not; he said he thought not too. The witness says he has taken no part in the case; that he went with Dr. Blackburn to show him where Duvall lived; told Dr. Blackburn that he was going that way, and being acquainted with the neighborhood, *and* would show him certain houses where witnesses he wanted to see lived.

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But the counsel for the plaintiff objected to the admissibility of said proposed evidence, or to the said question being put to the witness. The court overruled the said objection, and permitted the said question to be put and answered by the said witness, and the said evidence to go to the jury.

To which ruling of the court, and to their permitting the said evidence to go to the jury, the plaintiff, by his counsel, excepted and prayed the court to sign and seal this bill of exceptions, which is done this 21st of May, 1860.

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was against Miss Betsey; he asked her to overlook the offence; she said she would; he called her Miss Betsey; on another occasion he dined there, Betsey was at the table; he always addressed her as Miss Betsey. This witness further stated that when he first knew Miss Betsey she lived on Mrs. Louisa Magruder's place; he recollects going with Thomas B. Craufurd, whose eyes were bad, to Bladensburg; at his request said Craufurd told the witness he was going there to attend a trial; he had been warranted for a claim against Elizabeth Taylor; he does not know in whose favor; the witness does not think the case was tried on that day; he cannot fix the time.

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he never said he was there upon that occasion, and pronounced
190 it false; he has no recollection that he ever said Thomas B. Craufurd told him that he was or was not married; he may have said that he called her Betsey or Miss Betsey; he was as intimate with Thomas B. Craufurd as any of his family; he called him champion because he killed more birds than any one else; he has never heard Thomas B. Craufurd apologise for a late dinner on account of the absence of his wife.

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The defendant, further to maintain the issues on his part, proved by HENRY J. BALL, who, being duly sworn, testified that he was
192 present at a conversation between Dr. Sheehy and Tucker, at Mrs. Brookes's. Tucker said, I never believed they were married; and asked witness whether he believed they were married; and witness answered that he never did; and said Tucker said they never were married. The witness said he had lived in the neighborhood; that if anything of the kind had happened he would have heard. He said she had a child which *laid* between him (witness) and Vermillion. His first wife was a cousin of Betsey's; knew her since 1825; she lived on Miss Louisa Magruder's land at that time. He lived with Thomas B. Craufurd as overseer in the year 1824, '5, '6 '7—'39; was intimately acquainted with Betsey Taylor; visited his house; saw her frequently in 1839; called her Miss Betsey; never called her anything else. Thomas Craufurd called her Miss Betsey in the year 1839. Her relations never did believe she was married to Thomas Craufurd; such was the general reputation of her family; always went by the name of Betsey Taylor. Mr. Cox and Mrs. Cox died 6 and 10 years ago; her manner of living they considered as throwing herself away by living so; was not sent off by Betsey Taylor's influence, and never said so. Tucker introduced the subject; there was a broad foundation for the charge that Tucker brought.

193 The defendant, further to maintain the issues on his part, proved by Dr. BOYLE, who, being duly sworn, testified that he knew Thomas B. Craufurd since the year 1841, to the time of his death; that he attended his family until the year 1845; in the year 1844 he attended him for paralysis; during his sickness he desired to see his children, and insisted several days in succession; he advised him to send for them; said if he did, David never would forgive him, and after that he did send for them; he wanted careful nursing, and he thought she was a good nurse; his physical condition was very infirm; never recovered from this attack; saw her there afterwards; always called her Miss Betsey, as did himself; has seen her at the head of his table. His bed-room was down stairs; appeared as if he *layed* there alone; attended him in his last sickness.

The defendant, further to maintain the issues on his part, proved by Dr. BENJAMIN LEE, who, being duly sworn, testified that he knew Thomas Craufurd intimately from the year 1818 to his death; he practiced in his family from the year 1835 to 1848; attended Betsey Taylor;
she lived at Monterey; moved to Greenwood in 1844. He always
194 called her Miss Betsey Taylor; never knew her by any other name up to March, in the year 1848. Thomas Craufurd called her Betsey; lodged down stairs; saw Miss Betsey up stairs when he attended her; never saw anything to convince him that he did not lodge alone; dined there with invited company since 1844. She did not preside at the table at that time. He saw her passing about the house at the time; does not know whether they were married or not; never heard anything on the subject; does not think there was any good feeling between Dr. Craufurd and Thomas Craufurd; never saw any ladies at Greenwood.

And then the defendant, further to maintain the issues on this part, offered to read to the jury a copy of the last will and testament of the said Thomas B. Craufurd, with the probate thereof, as follows:

In name of God, amen. I, Thomas B. Craufurd, of Prince George's County, in the State of Maryland, being apprehensive of death, but of sound and disposing mind, memory, and understanding, and being anxious before I die to settle and dispose of all my estate by last will and testament.

In the first place, I desire all my just debts and funeral charges to be paid by my executor hereinafter named, and, after their
195 payment, I will and devise as follows:

I will, devise, and give unto George Thomas Craufurd, my natural son by Eiizabeth Taylor, now about 8 years old, the one-half of my entire landed estate, to be laid off to him so as to include the dwelling-house, and all the out-houses attached thereto, at Greenwood, wherein I now reside, to him, the said George T. Craufurd, his heirs, and assigns, in fee simple for ever.

Also I will and give the other moiety or half of all my landed estate, to Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Victoria Craufurd, my natural children and daughters by the said Elizabeth Taylor, to be equally divided between them, share and share alike, to them, their heirs and assigns, forever, as tenants in common. I give and bequeath unto the said George Thomas Craufurd, my aforesaid son, the other half of all my negroes and other personal estate of every description whatever, including debts due me, and every other description of personal property whatever to him, the said George Thomas Craufurd, his executors, administrators, and assigns.

The other half of my negroes, and other personal estate of every description, as aforesaid whatever, I give and bequeath unto the aforesaid Mary Elizabeth Craufurd, Sarah Jane Craufurd, and Anna Vic-
196 toria Craufurd, my aforesaid natural children and daughters by the said Elizabeth Taylor, to be equally divided among them, share and share alike.

And whereas, in all probability, the said Elizabeth Taylor may be now pregnant with child by me, I further will and devise that, in case such child shall be born after my death, that then, and in that event, said child shall have an equal share, with my aforesaid daughters, in all that half of my real and personal estate which I have hereinbefore devised and bequeathed to them.

I further will and devise, and do hereby direct, that Elizabeth Taylor, the mother of my aforesaid children, shall live and have her home at Greenwood, with the aforesaid children, so long as she shall live single and unmarried.

And lastly, I do hereby constitute and appoint my friend Thomas J. Bowie to be sole executor ot this my last will and testament, and guardian to my aforesaid children, for and until they shall respectively arrive at full age.

In testimony whereof I have hereunto set my sign and mark—not being able to write my name in consequence of a *paryletic* attack in my right arm, by which I have lost the use of it—and affix my seal
197 this twenty-second day of July, in the year of our Lord one thousand eight hundred and forty-four.

THO'S his × mark. B. CRAUFURD. [SEAL.]

Signed, sealed, published, and declared, by Thomas B. Craufurd, as and for his last will and testament in our presence; and, at his request

in his presence, and in the presence of each other, we have subscribed our names as witnesses thereto.

BENJA. L. GANTT.
W. BOWIE BROOKE.
G. B. STONE.

APRIL 4, 1848.

PRINCE GEORGE'S COUNTY, *set:*

Then came Benja. L. Gantt and George B. Stone, two of the subscribing witnesses to the within will of Thomas B. Crawford, late of said county, deceased, and made oath on the Holy Evangely of Almighty God, that they did see the testator herein named, sign and seal this will, and heard him publish, pronounce, and declare the same to be his last will and testament; that, at the time of his so doing, he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding; and that they, together, W. Bowie Brooke, the
198 other subscribing witness, respectively subscribed their names as witnesses to this will, in the presence of the testator, at his request, and in the presence of each other.

Sworn before—

JAMES HARPER,
Reg. of Wills for P. Geo. County.

PRINCE GEORGE'S COUNTY, *set:*

I, William A. Jarboe, register of wills for the county aforesaid, in the State of Maryland, do hereby certify that the aforegoing is a true copy of the last will and testament of Thomas B. Craufurd, late of said county, deceased, duly proved according to law, and now upon record and remaining in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the orphans' court for Prince George's County, this 12th day of January, A. D. 1860.

WILLIAM A. JARBOE,
Reg. of Wills for P. Geo. County.

For the purpose of showing the solemn declarations of said testator, touching the illegitimacy of his said children; to which the plaintiff objected.

But the court overruled said objection, and permitted said copy
199 to be read to the jury, and it was read accordingly; to which ruling of the court the plaintiff excepted, and p'ayed the court to sign and seal this his bill of exceptions, which is accordingly done this 21st day of May, 1860.

PETER W. CRAIN. [SEAL.]

And thereupon the said plaintiff, by the attorneys aforesaid, prays an appeal from the judgment of the court here so as aforesaid rendered to the court of appeals of the State of Maryland, and to him it is granted; in pursuance whereof, and according to the form and effect of the act of assembly in such case made and provided, the record and proceedings aforesaid, with all things thereunto relating, are transmitted to the said court of appeals of the State of Maryland accordingly.

Test:

P. W. CRAIN, *Clerk.*

STATE OF MARYLAND,
Charles County, sct:

I hereby certify that the aforegoing is truly taken from the records of the proceedings of the circuit court of Charles County.

{ CIRCUIT COURT FOR CHARLES COUNTY, MD. [SEAL.] } In testimony whereof, I have hereunto subscribed my name and affixed the seal of the circuit court for Charles County this sixteenth day of December, anno Domini one thousand eight
200 hundred and sixty.

P. W. GRAIN, *Clerk.*

And now come into the court of appeals here, as well the said George T. Craufurd, by Thomas G. Pratt and Robert J. Brent, esq's, his attorneys, as the said Richard S. Blackburn, by Thomas L. Alexander and C. C. Magruder, esqr's, his attorneys, and thereupon, on motion of the said Richard S. Blackburn, by his attorneys aforesaid, it is ruled by the court here that the said George T. Craufurd assign the errors in the record of proceedings aforesaid, or in the giving the judgment aforesaid, so as aforesaid brought before the court of appeals here for correcting the errors supposed to be therein, or judgment by the court of appeals hereunto be entered against him in default thereof.

And the said George T. Craufurd, by his attorneys aforesaid, says that, in the record of proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that, by the record aforesaid it appears that the judgment aforesaid, in the plea aforesaid given, was given for the said Richard S Blackburn, against the said George T. Craufurd, when, by the law of the land, that judg-
201 ment ought to have been given for the said George T. Craufurd against the said Richard S. Blackburn; therefore in that there is manifest error, and he prays that the judgment aforesaid for that error and others, being in the record of proceeding aforesaid, may be reversed, annulled, and held entirely as void; and that the said George T. Craufurd may be restored to all things which he hath lost by occasion of the said judgment, and that the said Richard S. Blackburn may rejoin to the error aforesaid, and so forth.

And thereupon it is ruled by the court of appeals that the said Richard S. Blackburn may join to the errors aforesaid, by the said George T. Craufurd, above assigned in the record of proceedings, or judgment by the court of appeals here will be rendered against him in default thereof.

And the said Richard S. Blackburn, by his attorneys aforesaid, says there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid; and he prays that the court of appeals will proceed to the examination as well of the record of proceedings aforesaid, as of the matter aforesaid by the said George T. Craufurd above for errors assigned, and that the said judgment may be in
202 all things affirmed, and so forth.

Whereupon, as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matter aforesaid by the said George T. Craufurd above for error assigned being seen, and by the court here fully understood, and mature deliberation thereon had, for that purpose it appears to the court of appeals here that there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid; therefore it is considered by the court of appeals here that the judgment aforesaid given in form aforesaid, be in all things affirmed and stand in full force and effect, the said causes for error

above assigned and alleged in anywise notwithstanding; and it is further considered by the court of appeals here that the said Richard S. Blackburn have execution against the said George T. Craufurd, as well for the sum of one hundred and seventy-two dollars and forty-six cents costs and charges aforesaid, as also the sum of eighty dollars and ninety-two cents adjudged unto the said Richard S. Blackburn by the court of appeals here, on his assent for his costs and charges which he sustained by occasion of the delay of the execution of the judgment afore-
203 said by pretext of the prosecution of the said appeals by the said George T. Craufurd for the correcting of errors of and upon the premises as aforesaid prosecuted, &c.

MEMORANDUM.—Judgment was affirmed in this case on the first day of March, eighteen hundred and sixty two, and execution awarded for the sum of one hundred and seventy-two dollars and forty-six cents costs in the circuit court, and eighty dollars and ninety-two cents in the court of appeals

MARYLAND, *sct:*

I, William A. Spencer, clerk of the court of appeals, Maryland, do hereby certify that the aforegoing is truly taken from the proceedings of the said court of appeals.

{ COURT OF APPEALS. [SEAL.] } In testimony whereof I hereunto subscribe my name as clerk, and affix the seal of the said court of appeals, this fifteenth day of March, in the year of our Lord one thousand eight hundred and sixty-one.

W'M A. SPENCER,
Clerk Co't of Appeals of Maryland.

But the plaintiffs, by their counsel, objected to the admissibility in evidence of said record in this suit; stating that the plaintiffs did
204 not seek to recover any title vested in said George T. Craufurd, who, it is admitted, is dead, and his children, now living, have not been made parties to this case, and the court being of opinion that said record was not admissible in evidence in this case, refused to permit the same to be given in evidence; to which ruling of the court the defendants, by their counsel, excepted; and prayed the court here to sign and seal this their third bill of exceptions, and which is accordingly done this 13th day of May, 1870.

WILLIAM F. GILES. [SEAL.]

After the ruling of the court in the preceding exception, made a part hereof, the defendants, further to maintain the issue on their part joined, offered in evidence the testimony of Rev. Timoleon Fiziac, taken in France, under a commission as follows:

Circuit court U. S., 4th circuit and district of Maryland.

GEORGE T. CRAUFURD AND OTHERS, LESSEE,
vs.
RICHARD S. BLACKBURN

It is agreed that a commission, issue to James Lesley, junior,
205 the American consul elect for Lyons, France, to take the testimony of witnesses in this cause.

THO. L. ALEXANDER,
For Def't.

Provided, before proceeding, the said James Lesley shall qualify himself by taking the oath in said commission stated, and shall successively propound each and every interrogatory to said witness, (Rev'd Timoleon Fiziac,) and reduce his sworn answers thereto to writing, and provided no other questions shall be propounded to said witness than the written interrogatories aforesaid, and that the answers and interrogatories be all carefully enclosed in a seal envelope, and addressed to the clerk of the circuit court of the United States, Baltimore, Maryland.

R. J. BRENT,
For Plaintiff.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To James Lesley, jun'r, the American consul elect for Lyons, France, esq'r., greeting:

Be it known that you are appointed commissioner to examine evidences in a case now pending in the circuit court of the United States for the 4th circuit in and for the Maryland district, between John Denn, lessee of George T. Craufurd, and others, plaintiff, and Richard S. Blackburn, defendant.

206 Therefore you are required, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the plaintiff or defendant, and that you examine them upon their corporal oaths, to be by you administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cases aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same with this commission, closed under your hand and seal, to the said circuit court with all convenient speed.

Witness the Honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty.

J. L. A.—Issued 13th day of June, 1861.

THO. SPICER,
Clk Circuit Court.

Commissioner's oath.

207 You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now or which may hereafter before the said commission is closed, be produced to and left with you by either party. So help you God.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses produced before and examined by the commissioners named in the commission hereunto an-

nexed, as far forth as you are directed and employed by the said commission to take, write down, and transcribe the said depositions, or any of them. So help you God.

GEORGE T. CRAUFURD AND OTHERS
vs.
RICHARD S. BLACKBURN. } Commission.

The execution of this commission appears in a certain schedule hereunto annexed.

JAMES LESLEY. [SEAL.]
Commissioner.

208 This commission, directed to my son James, and transferred to me by the commission directed to me, and hereunto annexed, was executed at the convent of the Sisters of St. Joseph de Clany, at Limosin, France, and not *a* Carcasonna, the place of residence of the Reverend Timoleon Fiziac, for the reason stated in the endorsement upon said commission directed to me, and hereunto annexed.

Lyons, October 18, 1861.

JAMES LESLEY,
Commissioner.

Witness in:
LOUIS N. WROTHER,
U. S. Consul.

Circuit court of the United States, 4th circuit and district of Maryland.

JOHN DENN, LESSEE OF GEORGE T. Craufurd,
vs.
RICHARD S. BLACKBURN.

Interrogatories, on the part of the defendant, to be propounded to the Reverend Timoleon Fiziac, now residing in France:

1st. What is your profession, occupation, or employment? If you answer that you are a priest in communion with the Roman Catholic Church, then say for how many years you have been thus in communion with said church.

2nd. Were you or not, in the year of 1835, or thereabouts, offi-
209 ciating at St. Patrick's Church, Washington City, as pastor, associate pastor, or priest, in charge of or officiating in said church? and if yea, then state what was your certain relation towards said church; when did it commence, and when was it terminated.

3. If, in answer to the last preceding interrogatory, you shall say that you were officiating in religious orders at or in said church during or in the year 1835, then answer, did you or did you not, at any time during the months of July, August, or September, in the same year, 1835, celebrate the rights of marriage between Thomas B. Craufurd, of Prince George's County, Maryland, and Elizabeth Taylor, of said county and State. Answer this question according to your recollection and belief, and with such explanations, if any, as you may think necessary.

4. Was or not any register kept or made of the marriages celebrated at the said church, or by the priest officiating at said church, during the months of July, August, and September, 1835? If yea, then what has become of said register?

5. If you shall say, in answer to the last interrogatory, that a register of marriages so celebrated was made, and that the same is in your possession, then produce said register before the commission, inspect
210 the said register, and especially those parts thereof which contain entries of marriages celebrated in the months of July, August, and September, 1835; and state whether or not there is in said register any entry of or relating to a marriage between Thomas B. Craufurd and the said Elizabeth Taylor.

6. State whether the said register-book is a book properly belonging to the said church, or is it a private memorandum-book of your own; and if you have no objection to part with the possession of said book, be pleased to deliver it to the commissioner, to be returned with the commission.

7. At the time you officiated in said church, if, in answer to the preceding interrogatories, you should have stated that you did officiate therein, were you or not aware of the law of said city of Washington, requiring parties who propose to contract marriage together to obtain a public license for that purpose; and were you or not in the habit of requiring such license from parties who desired you celebrate the rites of marriage between them?

8. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

211 T. S. ALEXANDER,
For Defendant.

Cross-interrogatories to be propounded to the Rev. Timeleon Fiziac:

1. State where you were born, and your present age.

2. If you state that you resided in Washington City in 1835, say 26 years ago, please also state in what year you left Washington, and when you left the United States, and in what countries and places you have resided since, and in what capacity, profession, or business you have been engaged since 1835 hitherto.

3. State how many marriages you have celebrated in your life, and how many since 1835, as nearly as you can recollect; and especially state whether you can recall the names of those whom you have thus married, by means of your power of memory unaided by memoranda.

4. What acquaintance had you with Thomas B. Craufurd, of Prince George's County, Maryland, and how often, and when, and on what occasions have you seen and conversed with him?

5. What was your acquaintance with Elizabeth Taylor, the sister of Mrs. Evans, who was the wife of the sexton Evans, of Washington City, and how often and where have you seen Elizabeth Taylor? And especially state whether you ever saw her with Thomas B. Craufurd,
212 and whether you ever baptised or christened any of her children, giving their names and the years in which they were baptised or christened.

6. If you baptised or christened any child or children of said Elizabeth Taylor, state whether you kept any record or memorandum in which said baptism or christening is entered; and if so, produce the same if in your possession, and if not, state where the same is; and especially state whether you entered her said child or children as natural or illegitimate child of Elizabeth Taylor, or as the child of Thomas B. Craufurd and Elizabeth Taylor, his wife.

7. State whether or not a marriage record was not kept at St. Patrick's Church, in Washington City, during the year 1835; and if so, state whether you carried said record with you when you left Washington, and if not, where and in whose charge was it left; and describe the size and appearance of said record, and state whether you can now recollect all the names recorded therein, and especially whether the names of Thomas B. Craufurd and Elizabeth Taylor are not therein recorded.

8. If you have any memorandum in your possession, and now produced, state whether the same *if* the official record-book of marriages kept at St. Patrick's Church, and how late it bears date, and if said memorandum is not the official record kept in said church; then state
213 whether you can identify the same as a faithful copy from said record-book made by yourself, without any addition or omission; and especially state whether you can positively swear that said memorandum produced by you, contains each and every entry of marriages made in the official record-book while you were at St. Patrick's Church.

9. State whether you would not have celebrated a secret marriage between parties living, to your knowledge, in sin, one or both of whom would only consent to be married on the condition that such marriage was to be kept secret.

10. Are you aware that the penalty on a minister for marrying parties in Washington without a license was merely a pecuniary fine?

11. Have you ever heard Sarah Evans, now deceased, say that her sister Elizabeth had married Thomas B. Craufurd, or any else? And if so, state where and what she said.

The Sarah Evans referred to was the wife of the sexton of the church.

ROBERT J. BRENT,
SAM. H. BERRY,
THOMAS G. PRATT,
For Plaintiff.

214 Circuit court United States, 4 circuit, district of Maryland.

GEORGE T. CRAUFURD AND OTHERS, LESSEE,
vs.
RICHARD S. BLACKBURN.

It is agreed that a commission issue to James Lesley, junior, the American consul-elect for Lyons, France, to take the testimony of witnesses in this cause.

TH. S. ALEXANDER,
For Defendant.

Provided, before proceeding, the said James Lesley shall qualify himself by taking the oath in said commission stated, and shall successively propound each and every interrogatory and cross-interrogatory to said witness, (Rev'd Timoleon Fiziac,) reduce his sworn answers thereto to writing, and provided no other question shall be propounded to said witness than the within interrogatories aforesaid, and that the answers and interrogatories be all carefully enclosed in a seal envelope, and addressed to the clerk of the circuit court of the United States, Baltimore, Maryland.

R. J. BRENT,
For Plaintiff.

215 Circuit court U. S., Maryland district.

CRAUFURD'S LESSEE
vs.
BLACKBURN.

It is agreed that the commission issued to James Lesley, j'r, be annulled, and another commission issued to James Lesley on the terms on which the former commission was issued. The commission to issue without further notice, and to be executed on the interrogatories already filed.

TH. S. ALEXANDER, *for Def't.*
R. J. BRENT, *for Pl'ff.*

SEPT. 13TH, 1861.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To James Leslie, of Lyons, esquire, greeting:

Be it known that you are appointed commissioner to examine evidences in a cause now depending in the circuit court of the United States for the fourth circuit in and for the Maryland district, between John Denn, lessee of George T. Craufurd and others, plaintiff, and Richard S. Blackburn, defendant. Therefore you are hereby re-
216 quested, having first taken the oath hereunto annexed and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that, at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the plaintiff or defendant, and that you examine them upon their corporal oaths to be by you administered on the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid, and, having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission, closed under your hand and seal, to the said circuit court, with all convenient speed.

Witness the Honorable Roger B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty.

R. J. B., J. S. A.

THOMAS SPENCER,
Clerk Circuit Court.

Issued 16th September, 1861.

Commissioner's oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties,
217 take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereto annexed, upon the interrogatories now or which may hereafter, before the said commission is closed, be presented to and left with you by either party. So help you God.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of

the parties in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses produced before and examined by the commissioner named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioner to take, write down, and transcribe the said depositions, or any of them. So help you God.

The execution of this commission appears in a certain schedule hereunto annexed.

JAMES LESLEY, [SEAL.]
Commissioner.

(Copy.)

This oath was administered to the Reverend Timoleon Fiziac,
218 at the convent of the Sisters of Saint Joseph de Clany, at Limoux, France, and not at Carcasonne, the place of his residence, for the reason stated in the endorsement on the commission directed to me and hereunto annexed.

JAMES LESLEY,
Commissioner.

Witness:
LOUIS MULLEN.

LYONS, *October* 18, 1861.

(Copy.)

This commission, directed to my son James and transferred to me by the commission directed to me and hereunto annexed, was executed at the convent of the Sisters of St. Joseph de Clany, at Limoux, France, and not at Carcasonne, the place of residence of the Reverend Timoleon Fiziac, for the reason stated in the endorsement on said commission directed to me and hereunto annexed.

JAMES LESLEY,
Commissioner.

Witness:
LOUIS MULLEN.

LYONS, *October* 18, 1861.

This commission, directed to me, was not executed at Carcasonne, France, the place of residence of the Reverend Timoleon Fiziac, for the reason stated, that, upon my arrival at that city and inquiring
219 for him at his domicil, I was there informed that he was not at home, but that he had gone to the convent of the Sisters of St. Joseph de Clany, at Limoux, France, whither I followed him, and, at the said convent, executed this commission, being satisfied, by sufficient and ample proof, that he is the Reverend Timoleon Fiziac mentioned in the written commission.

Witness my hand and seal.

JAMES LESLEY. [SEAL.]

LYONS, *October* 18, 1861.

UNITED STATES CONSULATE,
Lyons, France.

On the 18th day of October, A. D. eighteen hundred and sixty-one,

before me, Louis W'm Veollin, United States v. consul in Lyons, appeared James Lesley, U. S. consul-elect for Lyons, and commissioner appointed by the circuit court of the United States, district of Maryland, to take testimony of Timoleon Fiziac. Said James Lesley, being to me personally known, made oath to and subscribed before me the three above affidavits.

For witness whereof I have hereunto set my hand and official seal, in Lyons, the year and day as above.

LOUIS W. VEOLLIN,
United States V. Consul.

220 At the execution of the annexed commission, issued out of the circuit court of the United States, 4th circuit and district of Maryland, and to me directed, and empowering me to examine evidences in the cause depending in said court between John Denn, lessee of Geo. T. Craufurd and others, as plaintiffs, and Richard S. Blackburn, as defendant, I, James Lesley, the commissioner therein named, having, on the 16th day of October, 1861, at 12 o'clock m., in the city of Limoux, France, taken, before Mr. Ribes, the suppliant du juge de paix of and for said city, duly commissioned and qualified, the oath, both in French and English, required by said commission and hereto annexed, marked A and A 2, with proces verbale certifying said oath, marked A 3, hereunto annexed; and having afterwards gone to the convent of the Sisters of St. Joseph de Clany, at the said city of Limoux, did there, on the said 16th day of October, A. D. 1861, at 4½ o'clock p. m., proceed to take the following depositions, to wit:

The Reverend TIMOLEON FIZIAC, a witness of lawful age, produced on the part of *the part of* the defendant, being duly sworn, as shown by his oath hereunto annexed, marked B, and examined on the interrogatories and cross-interrogatories herewith returned, deposes and says:

1. To the first interrogatory, What is your profession, occupa-
221 tion, or employment, &c.?

The respondent answers: I am and have been a priest in communion with the Roman Catholic Church for thirty-nine years.

2. To the second interrogatory, Were you or not, in the year 1835, &c.?

The respondent answers: I was, in the year 1835, officiating priest at St. Patrick's Church, of Washington—from the year 1831 to 1836.

3. To the third interrogatory, If, in answer to the last, &c.?

The respondent answers: I cannot recollect.

4. To the fourth interrogatory, Was or not any register kept?

The respondent answers: No official register of marriages was kept, but for my own satisfaction I used to retain the names of persons whom I married; but the names of Thomas B. Craufurd, of Prince George's County, Maryland, and of Elizabeth Taylor, of said county and State, do not appear there. But this is not a proof that I have not married them, because I could have forgotten to write their names down.

5. To the fifth interrogatory, If you shall say, in answer to the last interrogatory, &c.

The respondent answers: My reply to the fourth interrogatorry is my reply to this one.

222 6. To the sixth interrogatory, State whether the said register book, &c.

The respondent answers: I have answered this interrogatory in my

answer to the fourth interrogatory, and I decline to deliver the private memorandum which I kept.

7. To the seventh interrogatory, At the time you officiated, &c.

The respondent answers: I was aware of the law in question, and I was in the habit of requiring such license from persons who desired me to celebrate the *rights* of marriage between them.

8. To the eighth interrogatory, Do you know or can you set forth, &c.

The respondent answers: I never celebrated the *rights* of marriage without requiring two witnesses. The two witnesses must of course be produced by the parties pretending that I have married them.

Cross-interrogatories:

1. To the first cross-interrogatory, State where you were born, &c.

The respondent answers: I was born at Narbonne, France, and I am now sixty-two years old.

2. To the second cross-interrogatory, If you state that you resided, &c.

223 The respondent answers: I have answered this question already, and I left Washington, U. S., in 1836, and I have nothing more to say to this question.

3d. To the third cross-interrogatory, State how many marriages, &c.

Respondent answers: I don't know, and cannot recall the names.

4. To the fourth cross-interrogatory, What acquaintance, &c.

Respondent answers: I had no acquaintance with them, and cannot recollect whether I have ever seen or conversed with them.

5. To the fifth cross-interrogatory, What was your acquaintance with, &c.

The respondent answers: I do not recollect having had any acquaintance with Elizabeth Taylor; I can only say I knew Mr. Evans, who was sexton in Washington City; this is all I can say to the fifth cross-interrogatory.

6. To the sixth cross-interrogatory, If baptized or christened, &c.

Respondent answers: I answered this question by the preceding, but I never kept any record of children baptized by me; such a record was, it seems to me, kept at the church, and I left it there when I returned to France.

7. To the seventh cross-interrogatory, State whether or not a marriage record, &c.

The respondent answers: I have already answered this interrogatory.

224 8. To the eighth cross-interrogatory, If you have any memorandum?

Respondent answers: I have also answered this question already.

9. To the ninth cross-interrogatory, State whether you would not, &c.

Respondent answers: I never did, indeed.

10. To the tenth cross-interrogatory, Are you aware that the penalty, &c.

Respondent answers: I don't recollect whether I was aware of any penalty, but I never married parties without a license.

11. To the eleventh cross-interrogatory, Have you ever heard Sarah Evans, &c.

Respondent answers: I cannot remember, and of course say nothing about it.

FIZIAC. [SEAL.]

Sworn and subscribed before me this 16th day of October, A. D. 1861.
JAMES LESLEY, [SEAL.]
Commissioner.

There being no other witnesses to be examined, the commissioner closed the said commission, and herewith returns the same, under his hand and seal, this 16th day of October, A. D. one thousand eight hundred and sixty-one, (1861.)
JAMES LESLEY, [SEAL.]
Commissioner.

225 The within and foregoing examination taken, reduced to writing, and by the witness subscribed and sworn to this 16th day of October, 1861.
JAMES LESLEY,
Commissioner.

A. Serment du commissionaire.

Circuit court des Etats Unis, 4m circuit et district de Maryland.

JOHN DENN, PRENEUR A BAIL DE GEORGE T. Craufurd et autres,
vs.
RICHARD S. BLACKBURN.

Moi, James Lesley, je jure que selon, le mieux de mon habilete et savoir, sentablement fidelement et sans partialite à aucune ou à l'une ou à l'autre des parties je prendrai les examins et dispositions de tous et de chaque temoin et temoins et poduits et examinis en virtue de la commission ce annexee sur les interrogatories maintenant ou qui pourrant ci-apres, avant que la dile commission soit terminee être produits a moi et laissees avec moi par ou l'une ou l'autre partir; et aussi que sontablement fidelement, et sans partialite a aucune ou à l'une ou à l'autre des parties dant cette cause je prendrai mettrai par écrit et transcroicée les depositions de tous, and chaque temoin et
226 temoin products, devant, moi et examins par moi le commissionaire nomme, dans la commission ci-annexee: Ainsi Dieu m'aide.
JAMES LESLEY. [SEAL.]

Le germent ci-denas a ete administre a Jam. Lesley, commissionaire nomme por le circuit court des Estats Unis, 4th circuit et district de Maryland, par M. Ribes, notaire ueirnsy supple ceur M. le judge da par eny vorhe por cause legitime Gutte sa de cotte traductria le 18 8'bre, 1861, suevant to proces-verbal ci-annexi a et engit segue avec uise.
RIBES.

JAMES LESLEY.

(Being unable to find any one in Limoux acquainted with the English language competent to discharge the duties of clerk, I acted in that capacity myself, and the within oath includes the substance of the clerk's oath as prescribed by the commission.
JAMES LESLEY,
Commissioner.)

A 2. Commissionaire oath.

Circuit court of the United States, 4th circuit and district of Maryland.

227 JOHN DENN, LESSEE OF GEORGE T. CRAUFURD and others,
vs.
RICHARD S. BLACKBURN.

I, James Lesley, do swear that I will, according to the best of my skill and knowledge, truly and faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereto annexed, upon the interrogatories now or which may hereafter, before the said commission is closed, be produced to and left with me by either party; and also that I will, truly and faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses produced before me and examined by me, the commissioner named in the commission hereunto annexed: So help me God.

JAMES LESLEY. [SEAL.]

M. Ribes du juge de paix de hurmony unn France le 16 8'bre, 1861.

(This is the oath referred to in the caption to the answers marked A 2.
JAMES LESLEY,
Commissioner.)

228 *A 3.—Extrait des registres de la justice de paix du canton de Limoux.*

L'an mil nuit cent. Sriscaute un es le seize octobre.

Par devant nous Jurien Ribes suppleant de la justice de paix du canton de Lamoix, arrived esse ment de Lemoix, department de l'au de moü trecia le juge de paix absent preur cause legitime assille de notre greffer.

A ce nysain Monseur James Lesley, ensiur. des Etats Unis d'America a lyin leguel nous a dit qu'en restu d'uin commissione herbale dunt et a ete charge dans sen pays il se presente desant nous a neffer de pretio serment au suz et de la commissione dieut il a ete charge.

Sur quoi nent suppleant susdit et soussigne avons sur le requisitione du dit James Lesley rein le sermint qu'il a pronounce a peur pres en ces termes. Moi, James Lesley, je jure de breevoir lans purliatile pour ceuene despartees selon me lummerer et mee eruseince en trule rente et fidelete les depositions de chaque temoin prodiuit et interrego en vertu de la conversion verbale suivant la questo y'agis. Prumettant de rayrysoster et cerere tous les interrogatione deysuis le commencement jus qu a la pin de l'enquete dent je
229 suis charge avec la plus struete et la plus fidele impartialite sans aneum consideratione preur l'une ou l'autre la quette j'ai ete nomme admittance a l'effet de precedur a l'enquite sur mentioned: Ainsi Dieu m'aide.

Demeurant le dit serment preti ordement qu acte en sera dresse et renvoyens le dit James Lesley a procedur a la dite enquite ainsi es comme il letesera.

De tout quoi nous avons ausse le present proces-verbal de serment que nous avans signe anes le dit James Lesley et notre greffier apres lecture. Fait a Lemoix lans mois et jour sus dit James Lesley. Ribes et resultz greffier signe a la minute.

En registre a Lemoix le seize octobre, 1861, p. $\frac{6}{26}$ C. C. rien un France, Decemmir dix, cen times Boyer Seani.

Collationne, revally qqvla.

This the document mentioned in the caption to the answers at the "proces-verbale," marked A 3.

JAMES LESLEY,
Commissioner.

RIBES GOY'T

B. Oath of Reverend Timoleon Fiziac.

230 I do swear on the Holy Evangely of Almighty God that the answers to be given by me to the interrogatories and cross-interrogatories to be propounded by James Lesley, commissioner, to me, in an action now pending in the circuit court of the United States, 4th circuit and district of Maryland, between John Denn, lessee of George T. Craufurd and others, plaintiffs, and Richard S. Blackburn, defendant, shall be the truth, the whole truth, and nothing but the truth. So help you God.

FIZIAC, × [SEAL.]
Can hire.

Sworn and subscribed to before me this 16th day of October, A. D. 1861, at the convent of the Sisters of St. Joseph De Clany, at Limoux, France.

JAMES LESLEY, [SEAL.]
Commissioner.

This is the oath of the Reverend T. Fiziac, referred to at the bottom of the caption to the answers, marked B.

JAMES LESLEY,
Commissioner.

The oath was administered to the Reverend Timoleon Fiziac at the convent of the Sisters of St. Joseph de Clany, at Limoux, France,
231 and not at Carcasonne, the place of his residence, for the reason stated in the endorsement on the commission directed to me, and hereunto annexed,

Lyons, October 18, 1861.

JAMES LESLEY,
Commissioner.

Witness:
LOUIS WHOLLIER, [SEAL.]
U. S. V. C.

The defendant then offered in evidence the testimony of Francis M. Bowie, a witness examined at the former trial of this case, in this case, and who has since died, as follows:

The defendant, further to maintain the issues on his part, proved by

the said FRANCIS M. BOWIE that he knew Thomas B. Craufurd prior to the year 1835; and from the year 1835 up he was frequently at his house, by invitation and otherwise; was on very intimate terms with him subsequent to the *the* year 1837; called in at the said Craufurd's when the said T. B. Craufurd asked him if he had any objection to ride by Monterey, where Betsey Taylor resided. On this occasion he told him to consummate the union by marrying, on account of the respectability of his children. He said he never had married and he never would. He said nothing on that occasion about the disposition of his property. He
232 does not know that the subject was ever referred to between the said Craufurd and himself. He said that Betsey moved down to Greenwood in the year 1843 or 1844. He was at Greenwood after the year 1844, but not so frequently as before that time; had seen Betsey there when he carried a negro home on one occasion. Craufurd said the offence of the nigger was against Miss Betsey. He asked her to overlook the offence. She said she would. He called her Miss Betsey. On another occasion he dined there; Betsey was at the table. He always addressed her as Miss Betsey. This witness further stated that when he first knew Miss Betsey she lived on Mrs. Louisa Magruder's place. He recollects going with Thomas B. Craufurd, whose eyes were bad, to Bladensburg; at his request, said Craufurd told the witness he was going there to attend a trial. He had been warranted for a claim against Elizabeth Taylor; he does not know in whose favor. The witness does not think the case was tried on that day; he cannot fix the time.

Upon cross-examination this witness testified that he knew Dr. Craufurd very well; was an intimate associate of his. It was in the year 1837 that this conversation took place about marrying Betsey Taylor; recollects saying at his father's table, five or six weeks ago, that he had
233 understood that some gentleman said he had to wait for *for* dinner because his wife was at church and could not have dinner until she returned. He never said he was there upon that occasion, and pronounced it false; he has no recollection that he ever said Thomas B. Craufurd told him that he was or was not married. He may have said he called her Betsey, or Miss Betsey. He was as intimate with Thomas B. Craufurd as any of his family; he called him champion because he killed more birds than any one else; he has never heard Tho's B. Craufurd apologise for a late dinner on account of the absence of his wife.

The defendants then gave in evidence the testimony of Dr. Boyle, who was examined as a witness at the former trial of this case, and who, it was admitted, has since died, as follows:

The defendant, further to maintain the issues on his part, proved by Dr. BOYLE, who, being duly sworn, testified that he knew Thomas B. Craufurd since the year 1841 to the time of his death; that he attended his family until the year 1845; in the year 1844 he attended him for paralysis; during his sickness he desired to see his children, and insisted several days in succession. He advised him to send for them; said if he did David never would forgive him, and after that he did send for
234 them. He wanted careful nursing, and he thought she was a good nurse. His physical condition was very infirm; never recovered from this attack; saw her there afterwards; always called her Miss Betsey, as did himself; has seen her at the head of his table. His bed-room was down stairs; appeared as if he *layed* there alone; attended him in his last sickness.

The defendants then gave in evidence the testimony of Dr. Benjamin Lee, a witness examined at the former trial of this case, in this court, and who, it was admitted, has since died, as follows:

The defendant, further to maintain the issues on his part, proved by Dr. BENJAMIN LEE, who, being duly sworn, testified that he knew Thomas B. Craufurd intimately from the year 1818 to his death; he practiced in his family from the year 1835 to 1848; attended *by* Betsey Taylor. She lived at Monterey; moved to Greenwood in 1844. He always called her Miss Betsey Taylor; never knew her by any other name up to March, in the year 1848. Thomas Craufurd called her Betsey; lodged down stairs; saw Miss Betsey up stairs when he attended her; never saw anything to convince him that he did not lodge alone; dined there with invited company since 1844. She did not preside at the table at that time; he saw her passing about the house at the time;
235 does not know whether they were married or not; never heard anything on the subject; does not think there was any good feeling between Dr. Craufurd and Thomas Craufurd; never saw any ladies at Greenwood.

The defendants then proved by RACHEL BOONE, a competent witness, that she knew the late Thomas B. Craufurd, and also knew the late Dr. David Craufurd. Thomas B. Craufurd was a very clever, familiar man; fond of joking. David was a proud and reserved man, but very honorable. Witness knew Elizabeth Taylor, and when she was confined with her last child she went to see her, at the request of Thomas B. Craufurd, and gave her such attention as her case required. Witness took the liberty of saying to him, that he ought to marry Betsey; but he said that he had not married her, and that he'd be damned if he ever would marry her. That child afterwards died in early infancy. Betsey Taylor then lived at Monterey. She afterwards, in 1844, moved to Greenwood.

The defendant then proved by HENRY BALL that he knew Nathaniel Tucker, whose testimony has been given in evidence by the plaintiffs, and that he was present at a conversation between said Tucker and Dr. Sheehy, shortly before this suit was commenced, but after the death of Dr. David Craufurd. Tucker said that he never believed that Thomas
236 B. Craufurd and Elizabeth Taylor were ever married, and he asked witness whether witness believed they were ever married. Witness answered that he did not think that they were ever married; and said Tucker said that they never were married. Witness said that he knew Elizabeth Taylor from the year 1825, and was intimately acquainted with her.

The defendants, by their counsel, offered to prove by said witness, that, to his own knowledge, said Elizabeth Taylor, being a single woman, and some years before her connection with Thomas B. Craufurd, had a child born alive, and which lived for some months; and that it was a matter of dispute whether witness or Mr. Vermillion was the father of said child. But the plaintiff's counsel objected to such proposed evidence, and refused to permit said question to be put or answered, or such evidence to be given, unless the defendant proposed to follow it up with proof to show that Thomas B. Craufurd had knowledge of said proposed fact, and the defendant's counsel being unable to prove such knowledge, the court refused to allow said offered evidence of the previous birth of a child; to which refusal the defendants, by their counsel, prayed leave to except, and that the court would sign and seal this their

fourth bill of exceptions, and which is accordingly done, this 13th day of May, 1870.

WILLIAM F. GILES. [SEAL.]

237 After the evidence detailed in the foregoing exception, made a part hereof, the defendants then proved by said witness that his first wife was a cousin of Elizabeth Taylor, and that Mr. and Mrs. Cox—both dead—were also her cousins; and then offered to prove by said witness that it was the general reputation amongst her connexions, that she was never married, and that she had thrown herself away by living as she did with Thomas B. Craufurd; and that they refused to associate with her.

The defendant then read in evidence the testimany of Dr. Sheehy, given on the former trial of this case, in this court, and who has since died, as follows:

The defendant, further to maintain the issues on his part, proved by Dr. SHEEHY, that he had a conversation with Nathan Tucker; he commenced the conversation himself; said he did not think Thomas Craufurd and Elizabeth Taylor were married; if he was sworn he would say so; asked H. J. Ball if he thought so; Ball said not; he said he thought not, too. The witness says he has taken no part in this case; that he went with Dr. Blackburn to show him where Duvall lived; told Dr. Blackburn that he was going that way, and, being acquainted with the neighborhood, and would show him certain houses where wit-
238 nesses he wanted to see lived.

The defendants then proved by MORDICAI MITCHELL, a competent witness, that he knew the late Thomas B. Craufurd very well, for many years before his death. He was a jovial and affable man; fond of horse-racing, cock-fighting, and very fond of women; that witness knew Betsey Taylor from 1823 to the time of her death; and was at one time engaged to be married to her; but witness broke the engagement for satisfactory reasons.

The defendants then offered to prove by said witness, that he knew, of his own certain knowledge, that, prior to 1828, the said Elizabeth Taylor had sexual intercourse with witness, and that he found she was then with child by another man, and that for that reason he refused to marry her; and that afterwards, and before she had any intercourse with Thomas B. Craufurd, she had a bastard child, and which died, when but a few months old; but the plaintiffs, by their counsel, objected to such proposed evidence, and the court sustained such objection and refused to permit said evidence to be given, unless the defendants proposed to follow it up with proof to show that said *that said* Thomas B. Craufurd had knowledge of the fact so proposed to be proved, which
239 the defendants were unable to do; to which ruling of the court the said defendants, by their counsel, excepted; and prayed that the court here would sign and seal this their sixth bill of exception, and which is accordingly done this 13th day of May, 1870.

WILLIAM F. GILES. [SEAL.]

After the signing of the aforesaid exception, made a part thereof, the defendants then proved, by REZIN ARNOLD, that he lived in 1821 in Prince George's County, and thenceforth until 1826. The first year he lived with said Thomas B. Craufurd as manager, but upon the occurrence of a disagreement between them witness left his service, but lived in the

immediate neighborhood for five years more. He knew Elizabeth Taylor very well; certainly from the year 1823, if not sooner, up to the time of her decease.

The defendants then proved, by THOMAS TALBERT, that in the year 1849, after the death of Thomas B. Craufurd, at the request of Gen'l Thomas F. Bowie, who was the executor of Craufurd's will, he took charge of the Greenwood estate. On one occasion during that year he spoke to Elizabeth Taylor, and addressed her as Mrs. Craufurd. She said,
"Don't call me Mrs. Craufurd; call me Miss Betsey Taylor. I
240 was never married to Craufurd, and I wish I had never seen one of the name." This was the first time I had spoken to her. I afterwards always called her Miss Betsey, or Miss Betsey Taylor.

The defendants then proved by WILKINSON, that, being in France in the year 1860, and being informed that Rev. Timoleon Fiziac, who had formerly been the pastor of St. Patrick's Church, in Washington City, was residing in France, he was requested by the original defendant in this case to ascertain where he was stationed. Witness succeeded in finding him. He was at that time stationed at Carcasonne, in France. Witness sought and found him at his hotel there. Witness informed him of the object of his visit, and the said Fiziac (he and the witness being together in a room) produced a book purporting to be a memorandum of all marriages celebrated by said Fiziac when at St. Patrick's Church, in Washington City. And the defendant proposed to prove, by said witness, that he and said Fiziac together examined said book from the beginning thereof to the end, and that neither the name of Thomas B. Craufurd or the name of Elizabeth Taylor was found recorded in said book under the date of 1st September, 1835, or at any other time. And
that said book purported to contain memoranda of marriages cele-
241 brated by said Fiziac from the year 1831 to the year 1836, both inclusive. But the plaintiffs objected to said question, and to the evidence so proposed to be given, and the court sustained the said objection, and refused to permit said question to be put or answered, for the reason that the witness had stated that he was not present at the examination of said Fiziac as a witness on oath, and cannot identify the book he then saw as the same one produced and verified by said Fiziac when his deposition was taken. To which ruling of the court the defendants, by their counsel, objected, and prayed that the court would sign and seal this their eighth exception, and which is accordingly done this 13th day of May, 1870.

WILLIAM F. GILES. [SEAL.]

After the signing of the aforegoing exception, made a part hereof, the defendants proved, by competent testimony, that no marriage license was ever issued for the celebration of a marriage between said Thomas B. Craufurd and said Elizabeth Taylor.

The defendants then offered to read in evidence to the jury that at the former trial of this case in this court Mrs. Vermillion, a competent witness, and who, it is admitted, has since died, was produced as
242 a witness on the part of the then defendant, and by whom they then offered to prove as follows:

That, before the commencement of the illicit intercourse between the said Thomas B. Craufurd and the said Elizabeth Taylor, she had become debauched by some other person, and had given birth to a bastard child,

and that such facts were known to the said Thomas B. Craufurd before the commencement of his said intercourse with her; and which the court then refused to permit to be given in evidence to the jury. But the plaintiff, by their counsel, objected to said offer upon the ground that it was mere offer to prove, and not testimony actually given and received. And the court sustained the said objection and excluded said proposed evidence, because she had not been sworn in said former trial. To which ruling of the court the defendants, by their counsel, prayed leave to except, and that the court here would sign and seal this their ninth bill of exception, and which is accordingly done this 13th day of May, 1870.

WILLIAM F. GILES. [SEAL.]

The plaintiffs then read in evidence the testimony of Rev'd JOHN P. DONELAN, without objection, as follows:

243 1st. In answer to the first interrogatory hereto annexed, he saith:

I remember to have seen on several occasions one Thomas B. Craufurd, whom I always understood to be of Prince George's County, Maryland, and I remember to have se'n, on several occasions, Elizabeth Taylor—otherwise, Craufurd.

2nd. In answer to the second interrogatory he saith:

I was assistant pastor, under Father Matthew, from the year 1836 to 1840, of St. Patrick's Church, in Washington City. I never met the Reverend Mr. Fiziac but once, and that was in St. Mary's Seminary, in Baltimore, in the year 1855 or 1856. (I always understood and believed the Reverend Mr. Fiziac resided with Father Matthew, as his assistant, for several years prior to my becoming such assistant,) except the period of a few months immediately prior to my becoming such assistant. I was appointed such assistant in July, A. D. 1836, (and, to the best of my remembrance and belief, the Reverend Mr. Fiziac had then resided at St. Patrick's Church as assistant pastor under Father Matthew for three or four years then last past, except the time Father King had officiated as such assistant.)

3d. In answer to the third interrogatory he saith:

I was acquainted with the late Mrs. John Evans, wife of the sexton of St. Patrick's Church. I was so acquainted with her at least from the year 1836 to 1840. (I always understood and believed her to
244 be the sister of the said Elizabeth Taylor, otherwise called Craufurd.) I remember hearing Mrs. Evans frequently state that her sister was married to said Mr. Craufurd, and I always believed it to be so. While living at St. Patrick's Church I frequently saw Thomas B. Craufurd and said Elizabeth visiting at said John Evans's, apparently as man and wife. My impression is that there was something in the circumstances of their marriage which made it a subject of conversation at times, and my best recollection now is (while I have no recollection of ever hearing their marriage questioned) that I have heard it stated that their marriage was a clandestine one, and whether the reason was that Mr. Craufurd and his friends were Protestants, and Elizabeth and her friends Catholics, or some other, I do not now remember.

4. In answer to the fourth interrogatory he saith:

I remember having baptized at least one of the children of the said Elizabeth. There was a register of baptism kept in St. Patrick's Church. I entered said baptism in said register. Said register was always in the possession and kept by the pastor of the church. In baptizing and christening children it is required to state, legitimate or lawful child of, naming the parents,) in the register. It is not usual, so far as I)

245 know or believe, to state in the register that the child is illigitimate, even when such is the fact.

5. In answer to the fifth interrogatory he saith:

I know that a marriage register was kept at St. Patrick's Church, in Washington City, during the time I was there as assistant pastor, and that such register had been kept before that time, and that while I was such assistant pastor the same register-book was used that had been used before that time, but I cannot state the date of the commencement of that register, nor whether it embraced the years 1834 to 1835 or not. I have no recollection of having seen this register since I left St. Patrick's Church in 1841. I last saw the same at St. Patrick's Church. It was there when I left, and was in the custody of Father Matthew, the pastor of the church. The same ought now to be in the custody of the present pastor of said church. I have an imperfect recollection of having seen, at some time, in said register and entry of the marriage between said Thomas B. Craufurd and Elizabeth Taylor, but in whose handwriting the entry was made, whether in the Reverend Mr. Fiziac's, Father Matthew's, or some other person, I do not remember. I have no recollection of any fact or circumstance which will raise any suspicion of the good faith of the entry, if such entry in fact existed.

246 In answer to the sixth and last interrogatory he saith:

I do not now remember any other fact or circumstance material to the question, whether Thomas B. Craufurd and Elizabeth Taylor were or were not married.

And the evidence of the Rev. Mr. Boyle as follows:

And he then produced the Reverend Mr. BOYLE, and gave in evidence, (proved) by him, that he is a priest in orders in the Roman Catholic Church, and was assistant pastor of St. Patrick's Church, in the city of Washington, and had been assistant pastor thereof since the year 1853; and that he had searched frequently for the marriage registers of said church, but had been unable to find any of a date earlier than the year 1840; and that it was the *entry* of a pastor of the Roman Catholic Church, made so by the *the rights* and usages of said church, to keep a register of all marriages celebrated in his church.

The testimony being closed on both sides, the plaintiffs, by their counsel, submitted the three following prayers:

247 First prayer. That, if the jury find from the evidence in this case that Elizabeth Taylor was married at St. Patrick's Church, in the city of Washington, by the Reverend Timoleon Fiziac, then the assistant minister of said church, on the first of September, 1835, to Thomas B. Craufurd, and shall further find from the evidence that Mary E. Sansbury and Sarah Jane Wall, two of the lessors named in the original declaration, were children of said Thomas B. Craufurd and Elizabeth Taylor, born prior to said intermarriage, and that subsequently to said intermarriage they were acknowledged and recognized by the said Thomas B. Craufurd as his children; and if the jury shall further find that Anna Victoria Hill and George T. Craufurd, two of the lessors of the plaintiffs, were children of said Thomas B. Craufurd and Elizabeth Craufurd, born subsequently to said intermarriage, then the verdict must be in favor of the plaintiffs for three undivided four parts of the lands described in the declaration; provided the jury shall further find that David Craufurd died intestate, seized of said lands, and left no kin-

dred surviving him as near to him as to the said children of Thomas B. Craufurd and Elizabeth, his wife, and provided the jury shall further find the death of said Mary E. Sansbury intestate pending this suit, and that Thomas O. Sansbury and Mary Sansbury were the children and heirs at law of said Mary E. Sansbury at the time of her death.

248 (Granted.)

Second prayer. That a marriage celebrated as deposed to by the said Elizabeth Craufurd, if the jury shall find that it was so celebrated, would not be invalidated because no marriage license has been obtained. (Granted.)

Third prayer. That if the jury shall find from the evidence in this case that Elizabeth Craufurd was married at St. Patrick's Church, in the city of Washington, by the Reverend Timoleon Fiziac, then the assistant minister of said church, on the first of September, 1835, to Thomas B. Craufurd, and shall further find from the evidence that Mary E. Sansbury and Sarah Jane Wall, two of the lessors named in the original declaration, were children of said Thomas B. Craufurd and Elizabeth Taylor, born prior to said marriage, and that subsequently to said intermarriage they were acknowledged and recognized by the said Thomas B. Craufurd as his children; and if the jury shall further find that

249 Anna Victoria Hill and George T. Craufurd, the other two lessors of the plaintiff named in the original declaration, and children of the said Thomas B. Craufurd and Elizabeth Craufurd, born subsequently to the said intermarriage, and that the lessors of the plaintiff named in the original declaration, and David Craufurd, deceased, from the common ancestor, Nathaniel Craufurd, and that the said Nathaniel Craufurd was the father of the said David Craufurd and Thomas B. Craufurd, then the verdict must be in favor of the plaintiffs for the lands described in the declaration. George T. Craufurd, one of the lessors of the plaintiff named in the declaration, and his heirs being estopped and barred, their right of action for any portion of the said lands described in the declaration, provided the jury shall further find that David Craufurd died intestate and unmarried seized of said lands, and left no kindred surviving him as near to him as the said children of Thomas B. Craufurd and Elizabeth, his wife, and provided the jury shall further find the death of said Mary E. Sansbury pending this suit, and that Thomas O. Sansbury and Mary Sansbury were the children and heirs at law of said Mary E. Sansbury at the time of her death.

And the defendants submitted the two following prayers:

250 First prayer. That it will be competent for the jury, on all the evidence, to find that the cohabitation between Mr. Craufurd and Elizabeth Taylor, during the entire period of such cohabitation, was illicit, and that no marriage was ever solemnized between them; and if they so find, then their verdict ought to be for the defendants. (Granted.)

Second prayer. That it is competent for them, on all the evidence, to find that no marriage was ever celebrated between the said Craufurd and Elizabeth Taylor; and unless they find that a marriage was, in fact, celebrated between them, their verdict ought to be for the defendants. (Granted.)

And the court granted the first and second prayers of the plaintiff, but rejected the plaintiff's third prayer, and granted the first and second prayers of the defendants.

To the granting of said first and second prayers of the plaintiffs, and

to the granting of each of them respectively, the defendants, by
251 their counsel, objected, and prayed that the court here would sign and seal this their tenth bill of exceptions, and which is accordingly done this 13th day of May, 1870.

WILLIAM F. GILES. [SEAL.]

And now here, at this day, to wit, on the 26th day of May, in the year of our Lord 1870, the said Mary M. Kearney, James L. Henry, and Kate Kearney Henry, his wife, produced to the court here the writ of the United States for the correcting of errors of and upon the premises, commanding the records and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

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253 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the judges of the circuit court of the United States for the fourth circuit in and for Maryland district, greeting:

Because, in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court, before you or some of you, between John Denn, lessee of Thomas O. Sansbury & Mary E. Sansbury, Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill, jun., and Ann V. Hill, his wife, plaintiffs, and Mary M. Kearney, James L. Henry and Kate Kearney Henry, his wife, defendants, a manifest error hath happened to the great damage of the said Mary M. Kearney, James L. Henry and Kate Kearney Henry, his wife, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further
254 to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-nine.

Issued the 26th day of May, 1870.

JAMES W. CHEW,
Clerk Circuit Court.

255 The United States of America to John Denn, lessee of Thomas O. Sansbury and Mary E. Sansbury, Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill, jun., and Ann V. Hill, his wife, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, pursuant to a writ of error filed in the

clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein Mary M. Kearney, James L. Henry and Kate Kearney Henry, his wife, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mary M. Kearney, James L. Henry and Kate Kearney Henry, his wife, should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and seventy.

WILLIAM F. GILES. [SEAL.]

Service acknowledged this 12th day of Aug., 1870.

R. J. BRENT,
For Def't in Error.

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257 *Writ of error bond.*

Know all men by these presents that we, Mary M. Kearney, of Washington, in the District of Columbia, and James L. Henry and Kate Kearney Henry, his wife, of Prince George's County, in the State of Maryland, as principals, and Thomas Miller, of Washington, District of Columbia, and William Rouzer, of Prince George's County, in the State of Maryland, as surities, are held and firmly bound unto Thomas O. Sansbury and Mary E. Sansbury, Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill, jun'r, and Ann V. Hill, his wife, in the full and just sum of seven thousand five hundred dollars, to be paid to the said Thomas O. Sansbury and Mary E. Sansbury, Daniel R. Wall, and Sarah Jane Wall, his wife, Philip Hill, jun'r, and Ann V. Hill, his wife, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy.

Whereas, lately, at a circuit court of the United States for the fourth circuit and district of Maryland, begun and held in the city of
258 Baltimore on the first Monday in April, in the year of our Lord eighteen hundred and seventy, in a suit depending in said court between John Denn, lessee of the said Thomas O. Sansbury and Mary E. Sansbury, Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill, jun'r, and Ann V. Hill, his wife, plaintiffs, and Mary M. Kearney, James L. Henry and Kate Kearney Henry, his wife, defendants, judgment was rendered against the said Mary M. Kearney, James L. Henry and Kate Kearney Henry, his wife; and the said Mary M. Kearney, James L. Henry and Kate Kearney Henry, his wife, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Thomas O. Sansbury and Mary E. Sansbury, Daniel R. Wall and Sarah Jane Wall, his wife, Philip Hill, jun'r, and Ann V. Hill, his wife, citing and admonishing them to be and appear at a Supreme Court, to be holden at Washington, on the first Monday in December next:

Now, the condition of the above obligation is such, that if the said Mary M. Kearney, James L. Henry and Kate Kearney Henry, his wife, shall prosecute their said writ of error to effect, and answer all damages

and costs if they fail to make their plea good, then the above ob-
259 ligation to be void; else to remain in full force and virtue.

MARY M. KEARNEY.	[SEAL.]
JAMES L. HENRY.	[SEAL.]
KATE KEARNEY HENRY.	[SEAL.]
THO. MILLER.	[SEAL.]
WILLIAM ROUZER.	[SEAL.]

Signed and delivered in presence of—
H. G. WORTHINGTON.

Personally appeared before me, in open court, this 26th day of May, 1870, William Rouzer, and made oath that he is worth the sum of seven thousand five hundred dollars over and above his just debts.

Sworn to before me this 26th day of May, 1870.

JAMES W. CHEW,
Clerk District Court U. S.

OFFICE OF RIGGS & CO.,
Washington, D. C., 24 *May*, 1870.

I hereby certify that I am acquainted with Dr. Thomas Miller, one of the surities with Mrs. Mary M. Kearney, to a bond of seventy-five hundred dollars, (7,500,) and, from my knowledge of his property, I think him good for the amount thereof.

GEO. W. RIGGS.

I certify that the annexed bond is amply sufficient.
Baltimore, May 26th, 1870.

REVERDY JOHNSON.

260 In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name and affix the seal of the said circuit court this eleventh day of August, A. D. 1870.

[SEAL.]

JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 353. Mary M. Kearney, James L. Henry, Kate Kearney Henry, his wife, plaintiffs in error, vs. John Denn, lessee of Thomas O. Sansbury, Mary E. Sansbury, D. R. Wall, & Sarah J. Wall, his wife, Philip Hill, j'r, and Ann V. Hill, his wife. Maryland C. C. U. S. Filed 7th December, 1870.

IN THE

Supreme Court of the United States.

No. 152.

MARY M. KEARNEY,
JAMES L. HENRY
AND
KATE KEARNEY HENRY,

PLAINTIFFS IN ERROR.

VS.

JOHN DENN,
LESSEE OF
THOMAS O. SANSBURY

AND OTHERS, DEFENDANTS IN ERROR.

Error to the Circuit Court of the United States for the District of Maryland.

STATEMENT AND POINTS ON THE PART OF THE PLAINTIFFS IN ERROR.

IN THE

Supreme Court of the United States.

No. 152.

MARY M. KEARNEY,
JAMES L. HENRY
AND
KATE KEARNEY HENRY,
PLAINTIFFS IN ERROR.

VS.

JOHN DENN,
LESSEE OF
THOMAS O. SANSBURY
AND OTHERS, DEFENDANTS IN ERROR.

Error to the Circuit Court of the United States for the District of Maryland.

STATEMENT AND POINTS ON THE PART OF THE PLAINTIFFS IN ERROR.

An action of ejectment was instituted in the Circuit Court of Prince George's county, in Maryland, by the original lessors of the plaintiff; to which Richard S. Blackburn, in his lifetime, appeared, as the only defendant, on making the usual confession of lease entry and ouster.

Mr. Blackburn was a citizen of the State of Virginia, and, on his motion, the cause was removed to the Circuit Court of the United States, for the District Maryland. A trial was had in said last mentioned Court, which resulted in a verdict, in favor of the plaintiffs. The cause was brought to this Court, by

writ of error; and the judgment of the Court below was reversed.—See 3 Wallace, 175. The cause was remanded to the Court below, with directions to award *a venire facias de novo*.

Before a second trial was had, Richard S. Blackburn, the only defendant, departed this life. Upon suggestion of his death, the now plaintiffs in error, were made defendants, instead of said Blackburn, and appeared by counsel.

Afterwards, the deaths of George T. Crawford and Mary E. Sansbury, two of the original lessors of the plaintiffs were suggested. The heirs of George T. Crawford did not appear, and were not made parties. Thomas O. Sansbury and Mary E. Sansbury, children and heirs at law of Mary E. Sanbury, deceased, were made parties in her stead.

Thereupon the defendants made the following motion.

The defendants in the case above entitled respectfully suggest to the Court here that the lessors of the plaintiff in the above case are all citizens and residents within the State of Maryland, and that no one of them ever has been, or is now, a citizens of any other State of the United States, and that the defendant, Mary M. Kearney, is now, and at the time of the commencement of this suit was, and during the intervening period has continuously been, a resident and a citizen of the District of Columbia, and that your defendants, J. L. Henry and Kate Kearney Henry, his wife, are now, and during the entire period of this suit, have been citizens of the State of Maryland, residents of Prince George's county, in said State. And they are advised and respectfully suggest that in the present predicament of the case, and the citizenship and residence of the parties, this Court has no jurisdiction to hear and decide the case; and the defendants therefore respectfully pray the Court here to dismiss this suit.

This motion was overruled, by the Court; and the defendants reserved an exception to the ruling of the Court.

The case was then tried, the second time, before a jury, who found the defendants guilty as to the trespass and ejectment, in three undivided fourths of the premises, mentioned in the declaration. Judgment was entered on said verdict; and it has been brought before this Court, by writ of error.

During the last trial, many exceptions were taken; but as only two points will be presented, in argument, on the part of the

plaintiffs in error, it is not deemed necessary to state the character of the several exceptions. So much of the case will be stated, as may be useful and proper, for the discussion of those points.

1. The first point, that will be mentioned is, that the motion to dismiss the suit ought to have been granted by the Court below.

The material facts are these: The suit is, an action of ejectment, for the recovery of a large and valuable tract of land situated in Prince George's county, Maryland. The original lessors of the plaintiff were citizens of said county; and the suit was brought, in the old form, against a casual ejector; and Richard S. Blackburn, as already stated, appeared, as sole defendant, upon making the usual confession of lease entry and ouster.

At this stage of the course, the motion to dismiss was made, as set out on page of this brief.

It may be proper to state, in this connection that Dr. David Crawford at the time of his death, was seized of an estate in fee-simple, in the lands mentioned in the declaration.

He died without leaving a widow, or decendant, or brother or sister, or father or mother, or any ancestor, paternal or maternal, living at the time of his death. The property, however, was claimed by different persons: *firstly*, it was claimed by the lessors of the plaintiff, who made claim as the children of Thomas B. Crawford, deceased, who had died in 1848, and if they were legitimate children they were the proper heirs of the intestate under the Maryland law of descents. Their legitimacy was disputed by the other claimants: *secondly*, it was claimed by Mr. Blackburn and others, who were first cousins of the intestate, *ex parte materna*; and being nearer, in degree of consanguinity than the claimants, next to be described, they suppose, that, if the lessors of the plaintiff had not inherited blood, they were entitled: *thirdly*, it was claimed by the now plaintiffs in error, that, as the next of kin of the intestate *ex parte paterna*, they were entitled, inasmuch as the lands had descended to the intestate, on the part of his father; and, upon the assumption that the lessors of the plaintiff had no inheritable blood, the plaintiff in error were, undoubtedly entitled, under the Maryland

law of descents; and it is expressly admitted in the case, record 6 and 7, that the now plaintiffs in error, are the only next of kin of Dr. David Crawford, unless the lessors of the plaintiff, or some of them, are the lawful children of the late Thomas B. Crawford, who, it is admitted died on the 9th of March 1848, and was the brother of said Dr. David Crawford. Dr. David Crawford died 5th December 1859.

Mr. Blackburn, in fact, had no title to any portion of the tract of land, described in the declaration. He not only had no estate of inheritance, which could pass to his heirs, but had not even a term which could pass to his personal representatives. The now plaintiffs in error, when they appeared to the suit, did not come in *under* Mr. Blackburn, as successors to his rights; they came in claiming to be the next of kin and heirs of the intestate, Dr. David Crawford.

Now it is very clear, that if, on the day they appeared to this suit, an original suit had been commenced against them by the plaintiffs in that suit, the Circuit Court would have had no jurisdiction; because all the lessors of the plaintiff, and two of the defendants, are citizens of Maryland, and the other defendant, is a citizen of the District of Columbia.

But the Judge below disposed of the motion, by the remark, that the question of jurisdiction related to the state of case, which existed at the commencement of the suit. But this supposed rule is not sanctioned by the decisions of this Court; it is qualified by the condition that the parties remain the same. Subsequent change of domicil does not, per se, take away jurisdiction, rightfully acquired.

1 Curtis Comm., Sec. 75, page 86.
Connolly vs. Taylor, 2 Pet. 565.

Judge Story, indeed, in the case of Clarke vs. Mathewson, reported in 2 Sumner's Rep. 262, decided, even in a case in Equity, and where jurisdiction clearly existed at the commencement of the suit, but which suit had abated by the death of the complainant, that his administrator, a citizen of Rhode Island, could not revive the suit against the defendant, a citizen of the same state. That decision was reversed in 12 Peters, 164, the opinion being delivered by Judge Story himself. The ground of reversal, as

stated in that opinion, were; 1st, that a bill of revivor was, in no just sense, an original suit; but a mere continuation of the original suit; 2d, that the death of a party, *where the cause of action survives*, does not, in a Court of Equity, amount to a determination of the suit; although in a common law action, upon the principles of the common law, such death would abate the suit; and 3d, that that case was covered by the 31st Section of the Act of 1789, chap. 20, (1 Stat. at large 90.)

Now, that Statute, is clearly confined to personal actions. Macker's heirs vs. Thomas, 7 Wheat, 530.

There is nothing in the practice of the Courts of Maryland or in the Maryland Statutes, that would apply to this case. For here, the cause of action did not survive. The new defendants did not come in, or claim, under Blackburn. They claimed adversely to him. It was an action of trespass, and the action died with him.

Nor does the Act of 28th February, 1839, Sec. 1, (5 Stat. at large, 321,) applied to this case, Barney vs. Baltimore City, 6 Wallace, 285. That Act pre-supposes existing jurisdiction rightfully acquired over one or more of the defendants to the suit. It certainly was not intended to enable citizens of the of the same state *by consent*, to impose on the Courts of the United States the settlement of their controversies. Consent cannot confer jurisdiction, where none exists by law.

2. The second exception was well taken—page 16. In explanation of said exception it is necessary to go back to the evidence of Elizabeth Taylor, (page 10,) who fixed the time of her alleged marriage to Thomas B. Crawford, by reference to the time of the baptism of her second child, Sarah. She stated that said child was about eight months old when she was christened. A manuscript book was produced on the trial which Mr. Callan, (page 16,) swore, was the official register of St. Patrick's church; and his attention being directed to a particular entry in the said book, he said the same was in the handwriting of the Rev. Father Fiziac, who was, at that time, the assistant minister of said church. The plaintiffs then offered to read said entry to the jury, "as evidence *to fix the date*

of the alleged marriage, testified to by said Elizabeth Taylor, in connexion with the baptism of her second child, Sarah Jane." The defendant objected. The objection was overruled, and the entry was read accordingly, as follows: "Sarah Jane, natural child of Elizabeth Taylor, born 31st December, 1834, and baptised 30th August, 1835, spenses Sarah Evans."

Father Fiziac was a Catholic Priest; and St. Patrick's was a Catholic Church. The law of Maryland of 1798, Cass., 24, providing for the establishment of vestries for each parish in the State, and requiring, (sec. 20 and 22,) the registration in a book, to be provided for the purpose, of baptisms, marriages and funerals, relates, exclusively, to the Protestant Episcopal Church. A copy of any entry in said book, under the hand of the Register, and with the common seal of such vestry, annexed thereto, was made evidence in all the Courts of Justice of the State. But no such provision was ever made, in relation to the Catholic community of Maryland; and which is very remarkable as it was, originally, chiefly settled by families in communion with that church. Hence the Register of baptisms, produced by Mr. Callan, was erroneously termed by him "the Official Register of said Church." In 1st Greenleaf on Evidence, Secs. 483, 484, the grounds on which credence is given to *Official Registers*, or books kept by persons *in public office*, are very clearly stated. But Mr. Fiziac was not a public officer. In making the entry, which was admitted to be read in evidence, he performed no duty, imposed by law. He was not acting under oath. His entry stands on the same footing, as, in England, stand the records of baptisms and of marriages, of Dissenters, Quakers, Roman Catholics and Jews, of the Walloor and French Churches, of the German Chapel Royal, and the German Chapel in Trinity; and, indeed, of the Fleet Registers. No non-parochial register however respected, ecclesiastically, by the respective denominations, to which they pertain, could be received as evidence, in Courts of justice in England, prior to the 3 and 4 Vict. Cass., 92. I do not think that the Fleet Registers have been sanctified, by that Statute; and from the extracts, found in the notes to the case of Doe d. Davies vs. Gatacre, 8 Carr and Payne, 578, in 34 Eng. C. L. Rep., 534, they are entitled to no respect.

The learning, on this head is well collected and clearly stated, in Habback on Succession, reprinted in 48 Law Library, part III, chapter 1 and 2, extending from page 469, (marginal) to page 514, (marg.)

In matters of evidence, the sanctity of an oath, in proof of any fact, as a general rule, is required; and the right of cross-examination is secured. This was the stern requirement of the common law. In official transactions, however—the officer, ordinarily, taking an oath of office—these requirements, from considerations of public convenience, were receded from, by various statutes. It was so enacted, in England, in reference to Parochial Registers. It was so enacted, in Maryland, by the Act of 1798, Cap. 24, already referred to. But the Catholic Churches, more under ecclesiastical government than political, have not thought proper to invoke the aid of the legislature in this respect. There is certainly no law, in Maryland, changing the common law rule, as to the registers of churces of baptisms and marriages and deaths kept by a catholic priest; and although I have carefully examined the Acts of Congress, since the establishment of the District Columbia, I find no change in this respect. The *fact* of marriage, if any took place, was to be proved, *per testes*. Although a commission was issued to father Fiziac, the supposed celebrant of the marriage, no question, as to this matter, was propounded to him by the plaintiffs. As far as his evidence goes, it *disproves* the pretence of any such marriage. If, to strengthen the evidence of Mrs. Taylor, it had been deemed desirable to prove, by him, the fact, and the time, of the alleged baptism of the child Sarah, the question might have been propounded to him; or any one present might have been called. The rules of evidence cannot be changed to answer the exigencies of a particular case.

WM. SCHLEY,
Counsel for Plaintiffs in Error.

IN THE

Supreme Court of the United States.

December Term, 1871.

MARY M. KEARNEY ET AL., PLAINTIFFS IN ERROR,
vs.
JOHN DENN, LESSEE, &c.

No. 152.

In Error to the Circuit Court of the District of Maryland.

Brief of Counsel of Plaintiffs in Error.

This is the sequel of the case of Blackburn *vs.* Crawford, reported in 3d Wallace, at page 175, decided at December term, 1865.

By the report of that case, it appears that David Crawford died intestate in Prince George's county, Maryland, in December, 1859. He had never been married; his father and mother, as well as his brothers and sisters, had all died before him.

Letters of administration on David Crawford's estate were applied for by Richard S. Blackburn, a citizen of the State of Virginia, son of the brother of the intestate's mother. This application was opposed by George T. Crawford, son of Thomas B. Crawford, a brother of the intestate. To repel the pretensions of the latter, Richard S. Blackburn alleged and proved him to be an illegitimate child of his father, Thomas B. Crawford, and the letters of administration were accordingly given to Blackburn.

Blackburn being in possession of certain estates of which the intestate had died seized, George T. Crawford, who had lost the administration, together with his sisters, equally with himself obnoxious to the imputation of illegitimacy, brought their action of ejectment against him, Blackburn, in October, 1860, in the circuit court for Prince George's county, Maryland; and Blackburn, as a citizen of Virginia, having availed himself of the privilege allowed him by law, procured the suit to be transferred to the circuit court of the United States for the district of Maryland, where it was tried, and resulted in a verdict and judgment in favor of George T. Crawford and his sisters. The case having been removed on writ of error to this court, was by its judgment, reversing that of the court below, remanded to the circuit court, with an order to issue a *venire de novo*.

This mandate was filed in the court below on the 10th of June, 1866.

See Rec., p. 1.

The cause was continued several times from term to term, when on the first Monday of April, 1868, the plaintiffs' attorneys suggested to the court that since the last continuance the defendant, Richard S. Blackburn, departed this life, and moved for leave, which was granted, to make new parties to appear and defend, and the cause was then continued to next term.

See Record, p. 3.

Hereupon it seems Mary M. Kearney, James L. Henry, and Kate Kearney Henry, his wife, were made parties defendant, and came into court on the first Monday of November, 1868, and having been suggested as "being interested on the part of defendant in the property mentioned in the declaration," their appearance was entered by their

attorney as "being alone interested as defendants in said property."

See Record, p. 3.

By further continuances, the cause went over to the first Monday of November, 1869, when the parties again came into court, and the plaintiffs' counsel suggested that since the last continuance two of the plaintiffs' lessors had died, namely, George T. Crawford, and Mary E. Sansbury, his sister; whereupon Thomas O. and Mary E. Sansbury, her children and heirs-at-law, were made parties plaintiff.

See Rec., p. 4.

Upon this, the counsel of the plaintiffs in error here, Kearney *et al.*, suggested to the court that the lessors of the plaintiff were then, and had always been, citizens of the State of Maryland; that Mary M. Kearney, made a party defendant, was then, and always had been, a citizen of the District of Columbia; and that J. L. Henry, and Kate Kearney Henry, his wife, the other parties made defendant, were then, and always had been, citizens of the State of Maryland; that the court had, consequently, no jurisdiction of the case, and they prayed for the dismissal of the suit.

See Rec., p. 4.

The court maintained its jurisdiction, and refused to dismiss; to which decision the defendants reserved their exception.

See Rec., p. 4, foot.

The cause was then tried on the merits, and the plaintiffs had verdict and judgment for three-fourths of the premises in controversy.

The defendants bring the case here by writ of error.

The counsel of plaintiffs in error respectfully submits the following points and authorities:

First. As to the jurisdiction of the circuit court.

It is quite clear that if this order making the plaintiffs in error parties defendant in the court below were an original suit it could not stand, because it would not be "a suit between a citizen of the State where the suit is brought and a citizen of another State."

But if the order making the plaintiffs in error parties in the court below was a mere continuation of the original suit, then the court below had jurisdiction, and the ruling of the judge was right.

The action was at common law, and upon the principles of that law the death of the defendant produced a determination of the suit, and destroyed it; the suit abated, *i. e.*, fell to the ground.

Unless, then, there be some provision of statute law to revive it, the suit cannot go on.

There is no such provision. The 31st section of the act of September 24, 1789, (1 Statutes at Large, p. 90,) providing that the executor or administrator of a deceased party, plaintiff or defendant in a suit, may carry it on after the death of such party, applies only to cases of personal, and not to those of real actions.

"By the death of the party," says the court, "the right descends to the heir, and a new cause of action springs up; and the plea is not, therefore, in the same condition it was in the lifetime of the party."

See Green *vs.* Watkins, 6 Wheaton, p. 262.
Macker's heirs *vs.* Thomas, 7 Wheaton, pp. 531, 532.

It is thus apparent that by the death of Richard S. Blackburn the suit in the circuit court came to an end, and that no statute of the United States saved it from that fate.

To settle the questions involved in the issues of *that* suit

a new action would have had to be commenced against the heirs of the defendant, Blackburn.

The plaintiffs in error are not the heirs of Blackburn, nor related to him in any degree; and if the plaintiffs in error had been the heirs of Blackburn, it would make no difference. In a case where the parties made defendant were really the heirs of the deceased, the court said: "If it should be said that the appearance of the plaintiffs in error in the circuit court cured the error committed in reviving the suit against them, the answer is, that by the death of the ancestor a new cause of action arose against the heirs, and the plea is not in the same condition as it was in the lifetime of the party. The suit having once abated by the death of the defendant, it was out of court, and a new summons and count against the heirs was necessary. Besides, the appearance was not voluntary, but was the consequence of an erroneous order of the court, enabling the plaintiffs below to prosecute the suit against the heirs."

See Macker's heirs *vs.* Thomas, 7 Wheaton, p. 532.

The appearance, then, in the circuit court operates no prejudice to the plaintiffs in error, as it was not voluntary, and even had they been heirs of the deceased party defendant, Blackburn, they could not be brought into court in that way; and without any regard to the question of citizenship, the court was, on the face of the record, without jurisdiction over the new parties.

But further, even had they been heirs, and the plaintiffs below had counted anew and issued new summons, they could not be brought into court, since they were, two of them, citizens of the same State, as plaintiffs, and the other not a citizen of a State at all.

The plaintiffs in error here, the defendants below, did not, as is urged against them, voluntarily appear in the cause.

The facts are these: The cause having been continued

until the first Monday in April, 1868, (see Rec., p. 3, line 3,) the plaintiffs came again into court, and the defendant, Richard S. Blackburn, did not come; whereupon the plaintiffs suggested his death, and on their motion alone leave was given to the said plaintiffs to make new parties to appear and defend in the plea aforesaid, (see Rec., p. 3, lines 9 to 12,) and the further process was continued until the next term.

At the next term, November, 1868, came the plaintiffs and Mary M. Kearney, James L. Henry, and Kate Kearney Henry, "who are made parties defendant in the plea aforesaid," and their appearance is entered by their then attorney, Wm. Schley, Esq.

See Rec., p. 3.

Thus they were made parties by an order of court, granted on the *ex parte* representation of the plaintiffs, which must have been made known to them during the adjournment, and they simply, in obedience to the order of the court, entered their appearance. This was involuntary, and bound them to nothing at all. This is the very state of facts narrated in the case of Macker's heirs *vs.* Thomas, (7 Wheaton, p. 532.)

This entry of appearance merely brought the parties, Kearney, Henry, and Kearney, into court. Then it was the plaintiffs' duty to "count," or to declare to the judge their cause of action against these parties. This was done by the agreement.

See Rec., p. 3, line 36.

Such an agreement, had it been so designed—as it clearly was not—could not give the court jurisdiction if it was otherwise without the power to entertain it. The Constitution does not permit the circuit court to entertain such a suit as this between citizens of the same State.

By the law of Maryland—see Code, title Abatement, p. 10, Art. 2, Sec. 1—"no action of ejectment, &c., in any court of law of this State shall abate by the death of either of the parties to such action; but upon the death of any defendant the action shall be continued, and the heir or executor of the defendant, OR OTHER PERSON INTERESTED ON THE PART OF THE DEFENDANT, may appear to such action; and in case the PROPER PERSON to defend doth not appear at the court at which the death is suggested, the plaintiff may issue a summons, returnable to the next court, DIRECTED TO THE PROPER PERSON, to defend such action, and upon such summons being served the person summoned shall appear."

The three persons summoned, and who appeared in the circuit court, and are the plaintiffs in error here, are not embraced in either of the categories mentioned in the Maryland statute; they are not, and are not pretended to be, the heirs or executors of the deceased Blackburn. But, it is said, they have acknowledged themselves to be in the third category, "persons interested on the part of the defendant," because in the direction in writing to the clerk to enter their appearance, in obedience to the order of court of the previous term to make them parties, they are described as "persons interested on the part of the defendant in the property mentioned in the declaration."

But the entry of appearance in obedience to a summons is not designed in law to commit the appearer to any peculiar line of defence, nor to operate as a waiver of any defence he may have. It waives nothing more than irregularity in the process and service, but does not preclude the party from moving to dismiss for want of jurisdiction, or any other sufficient ground, except in the process or service thereof.

See U. States *vs.* Yates, 6 Howard, 605.

The appearance being entered, the question arises, Who

are the appearers? The answer is given at p. 7 of the Record in the shape of an admission that Mary M. Kearney and Kate Kearny Henry, the latter the wife of James L. Henry—if the lessors of the plaintiff are illegitimate—are the only next of kin of the intestate, David Crawford, so that they are before the court claiming to be the next of kin of the intestate, and therefore interested only on their own behalf and on their own part exclusively, and not at all on behalf of the deceased defendant, Blackburn. They are not in a condition, then, under the Maryland laws, to be compelled to be defendants in the ejectment suit, although the local law says it survives, for they are neither the heirs of Blackburn, nor his executors, nor interested on his part.

Blackburn, the deceased defendant, was related to the Crawfords on the mother's side; his father's sister, Sarah Blackburn, was the wife of Nathaniel Crawford, the father by her of the intestate, David Crawford.

See Rec., p. 24.

The Kearneys, however, are related to the Crawfords on the father's side, and the real estate in controversy was inherited by David Crawford, the intestate, from his father, Nathaniel Crawford, (see admission foot of p. 6;) so that by the Maryland law of descents, the land in question could not go to Blackburn while the plaintiffs in error or other preferred relatives existed; the position of the Kearneys, therefore, was hostile to that of Blackburn; far from representing him or having an interest on his part, they are antagonistic to him and exclude him.

See Maryland Code, title Inheritance, Descents, p. 330.

It is apparent, then, that, independent of the question of citizenship of the Kearneys, they were improperly made to appear as defendants in the cause, and that be-

ing made such, the suit became thereby a new one, and is destitute of all the characteristics of a continuation of the original proceedings.

The motion they made to dismiss the case for defect of jurisdiction was the usual form of proceeding; it stands in the nature of a plea, and when, as in this case, the opposite party does not join issue on the fact of citizenship, the question is tried as if on demurrer to the plea, and so it was disposed of by the judge of the circuit court.

See Rec., p. 4.

Lessee of Lanning *vs.* Dolph, 4 Wash. C. C. Rep., p. 627.

Hatfield *vs.* Bushnell, 1 Blatchford C. C. Rep., p. 393.

Second. The circuit court having maintained its jurisdiction, and the trial of the cause having gone on, several bills of exception were taken during its progress, some of which will be now noticed.

On page 16 of the Record will be found the exception of defendants below to the ruling of the court allowing the plaintiffs to offer in evidence to the jury the book of baptismal records of St. Patrick's church, of Washington, D. C., which entry was proved to be in the handwriting of Fiziac, an officiating priest of the period, and was offered to fix the date of the alleged marriage, sworn to by Elizabeth Taylor, in connection with the baptism of her second child, Sarah Jane, between herself and Thomas B. Crawford.

Can such a baptismal record be admitted in evidence for such a purpose?

A. Since Fiziac, who made the entry, was still alive, the plaintiffs were bound to produce him to swear to it, and

without this the baptismal entry could not be introduced for any purpose whatever.

See Wibur *vs.* Selden, 6 Cowen, 164.
The Farmers' Bank of Lancaster *vs.* Whitehill, 16 Serg. & Rawle, p. 98.
Brewster *vs.* Doane, 2 Hill, p. 537.
Merrill *vs.* The Ithica & Oswego Railroad Co., 16 Wendell, p. 595.
State *vs.* Thomas, 64 N. Carolina, p. 74.
1 Greenleaf on Evidence, p. 200, § 115.

B. The entry is not official, and the baptismal register itself is not so, for no law requires such an entry to be made or such a registry to be kept.

It is immaterial whether a child be baptized or not.

All church registers, except, perhaps, those of marriage, stand on the same footing in the United States as those of the Dissenting chapels in England, where they are not admitted in evidence. On this point—

See Newham *vs.* Raithby, 1 Phillimore, p. 90.
Warren *vs.* Bray, 8 Barn. & Cress., 813.
Whittuck *vs.* Waters, 4 Carr & Payne, 375.

The baptismal entry, therefore, and the registry of St. Patrick's church has no more of an official character than those of a philosophical association or an insurance company; they are private memoranda, and while the person who made them lives, they can only be proved by him.

C. The entry, had it been sworn to by Fiziac, would still have been entirely inadmissible for the purposes for which it was offered, namely: to fix the date of the alleged marriage, sworn to by Elizabeth Taylor, in connection with baptism of her second child.

See Rec., p. 16.

If otherwise unobjectionable, it could be admitted for no such purpose. The fact was not within Fiziac's knowledge. All he could testify to would be the name he gave the child, the date, and the persons present.

See 3 Wallace, p. 175.

The admission of this entry, as the church registry, necessarily led the minds of the jury astray, and helped to make them think there was a marriage as well as a christening, while neither was legally proved.

Third. The next bill of exceptions to which attention is directed is to be found on page 80 of the Record. It was taken by the counsel of defendant to the ruling of the court excluding the record of the causes of Richard S. Blackburn *vs.* George T. Crawford and George T. Crawford *vs.* Richard S. Blackburn.

See Rec., pp. 28 to 80.

To understand this point it is necessary to examine what the record proposed to be offered was.

Richard S. Blackburn filed his petition in the orphans' court of Prince George's county, for letters of administration on the personal estate of David Crawford, on the 12th January, 1860, (see Rec., pp. 23 and 24.) In this petition he alleges that himself and certain other persons, not named, residing in Virginia and the District of Columbia, are first cousins of the deceased.

See Rec., p. 24.

On the next day, 13th January, 1860, George T. Crawford filed his petition in the same orphans' court for letters of administration on David Crawford's personal estate, (see Rec., p. 25.) In this petition he avers that Thomas B. Crawford, his father, intermarried with one Elizabeth Taylor, and that the issues of the marriage were:

1. Mary B. Crawford, wife of John B. Sansbury;
2. Sarah L. Crawford, wife of David R. Wall;
3. George T. Crawford, the petitioner;
4. Anne Virginia Crawford, wife of Philip Hill.

And he avers that he is the eldest male and distributee, and entitled to the administration.

See Rec., p. 26.

On the 17th January, 1860, Richard S. Blackburn filed his answer to the above petition of Crawford, (see Rec., p. 26.) In this answer he specially denies that Elizabeth Taylor was married to Crawford, and alleges *that the petitioner, George T. Crawford, and his sisters named in his petition*, were illegitimate children, and had been declared to be such by the last will of their father, Thomas B. Crawford.

See Rec., p. 27.

On the same day, 17th January, 1860, George T. Crawford filed an answer to Richard S. Blackburn's petition, in which he alleged that his father, Thomas B. Crawford, and his mother, Elizabeth Taylor, were lawfully married, and *that himself and his three sisters were the legitimate children*, and that he was prepared to prove these facts on proper issues to be sent to the circuit court of Prince George's county.

See Rec., p. 25.

On the 24th January, 1860, George T. Crawford presented a petition to the orphans' court for two issues, to be tried at law in the circuit court of Prince George's county, neither of which propounded in plain terms his mother's marriage and his own and his sisters' legitimacy.

See Rec., p. 39.

On the petition of Blackburn, a third issue was presented

in these words: "Whether Thomas B. Crawford was ever lawfully married to Elizabeth Taylor, either before or after the birth of George T. Crawford."

See Rec., p. 40.

Crawford having suggested on oath that he could not obtain a fair hearing in Prince George's, the cause was ordered to be transferred to Charles county, (see pp. 62 and 63;) and the case went for trial before Hon. Peter W. Crain, at Port Tobacco, (see pp. 43 and 44,) and the trial took place in May, 1860.

See p. 63.

The jury found that there never had been a marriage between Thomas B. Crawford and Elizabeth Taylor.

See Rec., p. 65.

In this trial George B. Crawford placed his mother, Elizabeth Taylor, on the witness stand.

See her testimony, Rec., pp. 70 to 72.

She says her unlawful intercourse with Thomas B. Crawford was not commenced under a promise of marriage, (Rec., p. 70, foot;) and that when the child, Sarah, was eight months old, they were married at St. Patrick's church, Washington, D. C., and that she never mentioned the marriage to any one before she did so to Mr. Hill, a month after the death of David Crawford, the intestate, in December, 1859.

See Rec., p. 72.

This case went to the supreme court of Maryland, and there the judgment of the lower court was affirmed.

See Rec., pp. 40 to 43.

It is respectfully submitted that the circuit court erred in

rejecting this record, and in support of the suggestion the following points are adduced:

A. Because George T. Crawford, the petitioner for letters of administration, was one of the parties to the suit as originally brought against Richard S. Blackburn.

See Mandate Rec., p. 1.

B. The record should have been admitted to show that such a verdict and judgment had been rendered, and to establish the legal consequences flowing therefrom.

See 1 Starkie on Evidence, p. *212. (Edition of Philadelphia, 1834, p. 125.)

C. The sisters of G. T. Crawford, joint plaintiffs with him in this suit, were virtually parties to the other suit in which he claimed the administration.

See 1 Greenleaf on Evidence, § 523.

D. The question of the legitimacy of the sisters, the three co-plaintiffs, which the record was offered to throw light upon, was one in which evidence of reputation is competent, and in that respect the record was admissible.

See Buller's Nisi Prius, (edition New York, 1806,) pp. 223 and 224.

Boudereau *vs.* Montgomery, 4 Wash. C. C. Reps., pp. 188 and 189.

E. Because the same right was in question in the two cases.

See Strutt *vs.* Bovingdon, 5 Espinasse, p. 58.

Earl of Carnarvon *vs.* Pillebois, 13 Meeson and Welby, p. *332.

F. Because the verdict and judgment in the record offered in evidence was directly upon the *status* of the immediate ancestor of all the plaintiffs in this suit, the ques-

tion referred to the jury having been, "Whether the said Thomas B. Crawford"—the father—"was ever lawfully married to the said Elizabeth Taylor"—the mother of all the plaintiffs—"either before or after the birth of the said George T. Crawford?"

See 1 Greenleaf on Evidence, § 525.
1 Starkie on Evidence, pp. *241 to *243.
Blackham's case, 1 Salkeld, p. 290.
Ennis *vs.* Smith, 14 Howard, p. 430.

Respectfully submitted.

THOMAS J. DURANT,
For Plaintiffs in Error.

IN THE

Supreme Court of the United States,

DECEMBER TERM, 1871. No. 152.

MARY M. KEARNEY, et al.

vs.

MARY E. SANSBURY, et al.

Brief of Counsel for Defendants in error.

IN THE

SUPREME COURT OF THE UNITED STATES.

December Term, 1871.

MARY M. KEARNEY, *et al*
vs.
MARY E. SANSBURY, *et al.*
No. 152.

Brief of Counsel for Defendants in error.

This cause was before this court and reversed, as reported in Blackburn vs. Crawfords, 3 Wallace, page 175. Richard S. Blackburn, the original defendant, being sued for the lands in controversy in the State court, availed himself of his privilege, as a citizen of Virginia, to remove this suit to the Circuit Court of the United States, where judgment being against him he sued out his writ of error, and this court entertained jurisdiction, reversed the case with costs for certain erroneous rulings of the Circuit Court, and remanded the cause for a new trial in the Circuit Court.

See Record, page 2. Record of former suit, as reported in 3 Wallace, 175, and incorporated by stipulation, Record, page 5.

After the mandate wes filed below and before April Term, 1868, Blackburn, the original defendant, died, and leave was given to the plaintiffs to make new parties. Record, page 3.

At November Court, 1868, Mary M. Kearney, James L. Henry and Kate Kearney Henry, his wife, appeared and were made defendants under an express stipulation filed in the cause, to the effect "that the defendant's death being suggested, they being interested on the *part of the defendant* in the property appeared as defendants, and that the original pleadings should stand *mutatis mutandis*." The case was then continued with these *appearances* on the part of the deceased defendant without objection to April Term, 1869, and then to November Term, 1869, (Record 3 and 4,) when George T. Crawford and Mary E. Sansbury, two of the original lessors having died, the heirs at law of Mary E. Sansbury were made parties plaintiff. Record 4.

At the same term Mrs. Kearney and her co-defendants, who had *voluntarily* appeared a year before "as *interested* on the part of the original defendant," (then deceased,) suggested to the court without any affidavit or proof whatever, that one of them was a citizen of the District of Columbia, and the other two were citizens of Maryland, and the court overruled said suggestion or motion, and the defendants reserved an exception, but the same was never signed or sealed. Record, page 4.

We shall maintain that the defendants having voluntarily appeared as "the *parties interested* on the part of the deceased defendant," were concluded from denying that they were his *representatives* quoad the land, and as such entitled to continue the defence of the suit.

See on this—

Act of Congress, 24th September, 1789, § 34, S 31.
1 Statutes, page 92.
1 Brightly's Digest, 792, § 3.
3 Harr. and Johns, 474.
Evans' Practice, 302.
Wilson vs. Codman Executor, 3 Cranch, 193.
Gist vs. Lackey, 7 Harr. & Johns., 138.

1 Maryland Code, Art. 2, S. 1 to 10.
Conard vs. Atlantic Ins. Co., 1 Peters, 386, 450.
De Wolf vs. Raband, 1 Peters, 476.
Yeaton vs. Lyman, 5 Peters, 223.
Sheppard vs. Graves, 14 How., 505.
Wylie vs. Cox, 15 How., 420.
Bell vs. R. R. Co., 4 Wall., 598.

It is perfectly immaterial where the residence of the successive parties may be, as the court lawfully acquired jurisdiction over the original defendant, a citizen of Virginia, and the jurisdiction cannot be divested by subsequent occurrences.

Morgan vs. Morgan, 2 Wheat., 290.
Mollan vs. Torrance, 9 Wheat., 537.
Dunn vs. Clarke, 8 Peters, 1.
Green vs. Custard, 23 How., 484.
United States vs. Myers, 2 Brock Marsh, 516.
Hatch vs. Dorr, 4 McLean, 112.
Thaxter vs Hatch, 6 McLean, 68.
Greenwood vs. Rector, Hempst., 708.
Trigg vs. Conway, Hempst, 711.
1 Brightly's Digest, Title Abatement—vide note A.
Hatfield vs. Bushnell, 1 Blatchford, 393.
S. C., 22 Vermont, 659.
Triggs vs. Conway, Hempstead, 711.
Clarke vs. Matthewson, 12 Peters, 170.
4 McLean, 112.

But it has been held by this court that after the order has been passed for the appearance of the representative of a deceased party, it is too late to contest the fact that he is such representative.

Wilson vs. Codman, 3 Cranch, 193.

A principle of law thus established is not weakened by the facts, that the appearance was by the voluntary act of the now defendants under a stipulation for that purpose, and an acquiescence on their part in such appearance for

twelve months, and that no affidavit or proof was offered to show their alleged residence.

After the appearance of the plaintiffs in error to this suit at the November Term, 1868, of the Circuit Court, an agreement was entered into between the counsel for the respective parties, Record, page 3, "that the original pleadings shall stand mutatis mutandis," and the cause was then continued to the April Term, 1869, when the motion to dismiss was first made.

It will be insisted that the agreement to adopt the pleadings in the cause by the attorneys of the plaintiffs and defendants, mutatis mutandis, was equivalent to entering the several pleadings anew in the cause. After all the pleadings have been entered in a cause and several continuances have been had after the *issues* joined, it is too late for the court to entertain a motion to dismiss. The agreement of counsel, the pleadings, and the continuance, operate as a *waiver* of *the right* to make the motion.

Maryland and N. York Coal and Iron Co., vs Wingert, 8 Gill, 179.
Billingslea vs. Gilbert, 1 Bland, 566.
Binney's Case, 2 Bland, 109.
Colvin vs. Warford, 18 Md. R., 275.
Henderson vs. Gibson, 19 Md. R., 234.
Nesbitt vs. Dallam, 7 G. & J., 509.
Fulton Bank vs. Beach et al, 2 Paige, 307.
Graham vs. Stagg, 2 Paige, 324.
Belt, admr. vs. Blackburn, admr., 28 Md., 227.

The defendants not having entered an *appeal* from the order of the court overruling the motion to dismiss, but, having "reserved their exception to the decision of the court, (Record p. 4,) and the exception not being signed and sealed by the Judge of the Circuit Court, *this* court cannot entertain the same. Before this court can pass

upon an exception taken in the court below, it must be signed and sealed by the Judge who presides at the trial.

Stimpson vs. Westchester Railroad Company, 3 Howard, 553.

Ex Parte Martha Bradstreet, 4 Peters, 102.

Walton vs. United States, 9 Wheat., 651.

Rutherford vs. Pope et al, exec. of Gardiner, 15 Md., 579.

Davis vs. Wilson, 2 Harr. & Johns., 345.

Ellicott vs. Martin, Love & Co., 6 Md., 509.

On the merits of this case:

We premise its consideration by calling the court's attention to the fact that we have had two concurring verdicts of a jury in our favor, supporting the claim of these children to legitimacy.

The new trial ordered by this court, excluding certain evidence erroneously admitted on the first, and admitting other testimony that had been erroneously rejected, resulted in showing that the corrected re-trial of facts did not affect the validity of our claim before a second jury. And now we submit that there are no exceptions to this trial of a substantial character.

The detailed statement of evidence begins at page 6 and terminates at page 97, incorporating the deposition of Robert Wright, a new and important witness, never examined until this last trial. See Record, page 7.

The first exception is at page 15, and turns on an objection to a question to understand which it is only necessary to say, that the alleged marriage of Thomas Crawford and Elizabeth Taylor, the parents of the plaintiff, was sought to be made out by acts and declarations of Thomas Crawford, testifying to the lawful character of their cohabitation from a certain period, and of his recognition of the mother as his wife, and her children as his, under the Act of Maryland, 1820, ch. 191, sec. 7.

These declarations and acts of the deceased father, made ante litem, and before even the death of his brother David, as whose collateral heirs the plaintiffs claimed in the suit, were clearly competent evidence, and had been given at great length without objection, as the statement of facts well shows.

They were not only proof of marriage and recognition by a husband and father, but were accompanied by open cohabitation as man and wife, and were consistent with and confirmatory of the direct proof of the marriage as testified to by the mother and wife on former trials, she having since deceased, and her testimony being read without objection. See Record, pages 9, 10 and 11.

In the light of these facts and history, we submit that the question excepted to at page 15 was perfectly proper, and it was in no respect leading further than to indicate the occasion referred to.

1 Peters, 328.
3 Wallace, page 187.
1 Greenleaf Evidence, S. 103.
30 Md., 384.
Crawford vs. Blackburn, 17 Md., 49.

The second exception is found at page 20, and involves the simple question whether the offered statement of a witness which had been erroneously rejected by the court on a former trial, and never given to the jury as sworn testimony subject to cross examination, can be received after the decease of the offered witness, on a second trial, under the rule admitting what a deceased witness swore to on a former trial.

The rule only admits testimony given (not offered) at the former trial. Here the witness, by error of the court, was not allowed to testify as offered. How can it be said he would have supported the offer, or that on cross-examination, if he had been allowed to testify, he would not have retracted or contradicted himself?

In Noble vs. McClintock, 6 W. & S., 58, it was held, that if the witness was only partially examined at the former trial his statement is rejected. Here he was not examined at all, and the remedy of the defendant was to have perpetuated his testimony for the contingency of a reversal.

1 Greenl. Ev., Sections 164, 165.

Warren vs. Nichols, 6 Met., 261.

The third exception shows, on page 23, the offer of defendants to read a Record between the original defendant, Blackburn and George T. Crawford, one of the original lessors, by which this court held George T. Crawford, was estopped from setting up his claim as one of the heirs of David Crawford, but that said Record was not admissible against his sisters—they being no parties to that Record.

3 Wallace, page 190.

Watson vs. Jones, 13 Wallace, 679.

Now as neither George T. Crawford, nor his children, who were his heirs, were parties to this suit, the objection was well taken and ruled in Record, page 80. Nor was there any prejudice to the plaintiffs in error, as it will be seen by the verdict and judgment, that the recovery was only for the three-fourths vested in the sisters, (page 6,) as to whom this old Record was not admissible.

3 Wallace, page 190.

The fourth exception begins at page 93, and raises the question, whether the witness could state the indecent facts offered by him as any relevant evidence in this case for any purpose, especially when the scienter of those facts on the part of Thomas Crawford, who subsequently married the accused woman, was disavowed.

The 5th exception, stated in the exception to be the *sixth*, involves the same precise question, and is found on page 94 of Record. On both of these questions we submit the following observations:

1. It was not competent for the plaintiff in error to impeach the credit of the witness, Mrs. Crawford, by any evidence short of her general character for truth.

Stuart vs. Williams, 3 Md. Rep., 430.
1 Greenl. Ev., Section 461.

2. Her general character for chastity only would be admissible in a prosecution for rape, and not particular acts of immoral conduct, even in such case.

3 Greenl. Ev., Section 214.
Russ & Ryan's Crim. cases, pages 209, 212.
2 Phillips Ev., page 952.

3. The lewd conduct of a mother may or may not be received touching the paternity of a child, if it shows an intercourse with other men than the alleged father about the time of conception.

2 Greenl. Ev., Section 150.
1 Phillips, page 630.
Eddy vs. Gray, 4 Allen, 435.
Law Register, February, 1863, page 253.
16 Ark., 530, Henderson et al vs. State.
6 Blackford, 1.
3 Mumf., 495.

But here, the offer was to prove that Elizabeth Taylor, *some years* before her connection with Thomas B. Crawford, had a child born alive—being then a single woman. In both exceptions the offer was to prove she had a bastard child, who died before she had any intercourse with Thomas B. Crawford.

The evidence could have no relevancy to rebut the marriage in issue, because it was not proposed to show that Thomas B. Crawford had any knowledge of it. Without a knowledge of it on his part, it could bring no bearing upon the issue of his afterwards marrying her.

The 6th exception, stated in the exception to be the 8th,

(page 95,) involves the right of a witness to state the facts, that he and father Fiziac examined a book produced by the latter to the witness, and purporting to be a memorandum of all marriages celebrated by said Fiziac, when at St. Patrick's Church, in Washington city, and that neither the name of Thomas B. Crawford or the name of Elizabeth Taylor was found recorded in that book under the date of September 1st, 1836, or at any other time. And that said book purported to contain memoranda of marriages celebrated by said Fiziac from the year 1831 to the year 1836, both inclusive.

The court ruled out the said proposed evidence for the reason that the witness had stated, that he was not present at the examination of said Fiziac as witness on oath, and could not identify the book he then saw as the same one produced and verified by Fiziac when his deposition was taken out of his presence, as his original memorandum, but refused to produce it, (page 88,) and furnished no copy thereof, and expressly swore it was no proof he had not married the parties as he might have forgotten to enter the fact.—Record, page 87.

The question is, whether the witness Wilkinson could testify as to the non-contents of some book he saw at some time in the hands of Fiziac, which is not identified by either of them as the memorandum book which Fiziac swore he kept and refused to produce at his examination.

We submit there was no error in this ruling, and the proposed testimony rested on no legal basis, whatever, as the witness stated, he was not present when Fiziac was examined and could not identify the book.

In 3 Wallace, page 191, the court say the production of the memorandum would have been necessary for two reasons. It would have been the best evidence of the existence and contents of the entry, and would have given to the adverse party the means, to which he was entitled,

of a cross-examination. The memorandum book is not produced on this trial, and without its production or the identification of the book as the same one in reference to which the witness Fiziac was examined, the witness Wilkinson is asked to speak of what the book he saw did not contain. The question and evidence are clearly inadmissible.

The seventh exception, stated in the exception to be the ninth, commences on page 95 of Record.

The defendants offered to read in evidence to the jury certain evidence of Mrs Vermilion, who was produced on their part as a witness on the former trial, but who is now dead, which evidence was offered on the former trial, but not actually given and received. The court upon objections by the counsel for the plaintiffs excluded said proposed evidence, because the witness had not been sworn upon the former trial.

The correctness of this ruling is so evident that it is useless to do more than state the proposition.

See 1 Greenl. Ev., Sections 164 and 165.

Evidence which is merely offered and rejected, and never established by the sworn statement of the witness, in a former trial, cannot be read, in case of the death of a witness, on a second trial.

The testimony being closed, the plaintiffs by their counsel submitted three prayers, and the defendants two prayers, which are found on pages 97 and 98 of the Record.

The court granted the first and second prayers of the plaintiffs, and rejected the plaintiffs' third prayer, and granted the first and second prayers of the defendants.

To the granting of the first and second prayers of the plaintiffs, and to the granting of each of them respectively, the defendants excepted.

It will be insisted that there is no error in either of these prayers. If there is any error it is, that they do not go

far enough, and ask the court to instruct the jury that the plaintiffs were entitled to recover the whole premises mentioned in the declaration instead of three undivided four parts. The defendants are not injured or damnified by this prayer.

3 Wallace, p. 190.

It requires the jury to find all the facts necessary to the recovery in the case.

1st. The marriage of Thomas B. Crawford and Elizabeth Taylor. 2d. That two of the lessees named in the original declaration were children of the said Crawford and Taylor, born before their marriage, and that subsequently to the said marriage they were acknowledged and recognized by the said Thomas B. Crawford as his children. 3d. That the other two lessees named in the original declaration were children of the said Thomas B. Crawford and Elizabeth Crawford, born after their marriage. 4th. That David Crawford died intestate. 5th. Seized of the lands. 6th. And left no kindred surviving him as near to him as the said children of Thomas B. Crawford and Elizabeth, his wife. And 7th. Providing further, that the jury must find that Mary E. Sansbury died intestate pending the suit; and that Thomas O. Sansbury and Mary E. Sansbury were the children and heirs at law of the said Mary E. Sansbury.

3 Wallace, p. 176.

1 Code, Art. 47, Ch. 29.

Act of 1820, Ch. 191, Sec. 7.

2. The want of a marriage license does not invalidate a marriage, celebrated as deposed to by Elizabeth Crawford.

3 Wallace, p. 176.

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